# OFFICIAL GAZETTE

OF THE

# EUROPEAN COAL & STEEL COMMUNITY

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## OF THE

# EUROPEAN

# COAL AND STEEL COMMUNITY

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# THE COURT OF JUSTICE

## JUDGMENT OF THE COURT

### IN THE JOINT CASES No. 7–54 AND 9–54: THE GROUPEMENT DES INDUSTRIES SIDERURGIQUES LUXEMBOURGEOISES

*vs*

### THE HIGH AUTHORITY

(TRANSLATION, the French text being authoritative.)

In the cases

the GROUPEMENT DES INDUSTRIES SIDERURGIQUES LUXEMBOURGEOISES,

which has chosen as its address for service its office, 31, Boulevard Joseph II, Luxemburg,

*Plaintiff*

represented by its Directing Committee, assisted by Mr. Alex BONN, Barrister and Solicitor in Luxemburg,

*vs*

the HIGH AUTHORITY OF THE EUROPEAN COAL AND STEEL COMMUNITY,

which has chosen as its address for service its office, 2 Place de Metz, Luxemburg,

*Defendant*

represented by its legal Adviser, Mr. Nicola CATALANO,

as Agent,

assisted by Mr. Ernest ARENDT, Barrister and Solicitor in Luxemburg,

the GOVERNMENT OF THE GRAND DUCHY OF LUXEMBURG

which has chosen as its address for service the Ministry of Foreign Affairs, 5 rue Notre-Dame, Luxemburg,

*Intervening Party*

represented by Mr. Pierre PESCATORE, Legal Adviser of the Ministry of Foreign Affairs,

concerning, on the one hand, the Appeal for annulment filed against the implied negative Decision resulting, in application of Article 35 of the Treaty, from the fact that the High Authority did not answer the letter of July 14th, 1954, by which Plaintiff requested that a decision be taken or a recommendation be made regarding the activities of the Office Commercial du Ravitaillement du Grand-Duché de Luxembourg and regarding the Caisse de Compensation attached to this Office by Ministerial Decree of March 8th, 1954 (case 7–54);

on the other hand, the Appeal for annulment filed " in so far as needed " against the negative Decision of the High Authority, which follows from its letter of November 27th, 1954, answering the request contained in the letter of July 14th, 1954 (case 9–54) ;

THE COURT

composed of

President PILOTTI,

Presidents of the Chambers RUEFF and RIESE,

Judges SERRARENS, DELVAUX, HAMMES and van KLEFFENS,

Advocate General : ROEMER,

Registrar : VAN HOUTTE,

delivers the following

## JUDGMENT

*As regards the facts :*

1.—*Concerning the facts and the procedure*

By its Application of October 11th, 1954 (Application 7–54), the Groupement des Industries Sidérurgiques Luxembourgeoises requested :

" May it please the Court

to declare the present Appeal formally valid,
to declare it justified on its merits,

to annul the implicit negative Decision of the High Authority which arose after the Groupement des Industries Sidérurgiques Luxembourgeoises filed its letter of July 14th, 1954,

Consequently to declare that the High Authority will be bound to decree, by way of a Decision or Recommendation :

(1°) the suspension of the activities of the Office Commercial du Ravitaillement in so far as it is the sole importer of coal in the Grand Duchy of Luxemburg,

(2°) the prohibition and abolition of the Caisse de Compensation attached to the Office Commercial du Ravitaillement by Ministerial Decree of March 8th, 1954,

To condemn the High Authority in the costs."

Plaintiff joined to his Application :

(1) a copy certified true by Plaintiff of the letter Plaintiff addressed to the President of the High Authority on July 14th, 1954 ;

(2) a copy of the Grand-Ducal Decree of April 30th, 1945, and of the Ministerial Decree of March 8th, 1954 ;

subsequently, Plaintiff filed with the Registry of the Court :

—the memorandum and articles of association of the Groupement,

—a procuration of Mr. Léopold Bouvier, President of this " Groupement ", for Mr. Alex Bonn, Barrister and Solicitor in Luxemburg,

—a testimonial certifying that Mr. Alex Bonn is of the Luxemburg Bar ;

By letter of November 27th, 1954, Defendant informed Plaintiff that the Caisse de Compensation " does not imply any consequence inconsistent with the Treaty and therefore can not be prohibited " ;

In consequence of this letter, Plaintiff filed on December 23rd, 1954, " in order to avoid a sterile discussion regarding questions of admissibility ", a second Application (Application 9–54) with the same object as the preceding one and by which Plaintiff requested furthermore :

" May it please the Court

to declare the present Appeal, filed only in so far as needed, formally admissible and founded on its merits ;

while maintaining the Appeal of October 11th, 1954, the submissions of which are requested to be adjudicated in the first place, to annul in so far as it may be necessary the negative decision of the High Authority, deriving from its letter of November 27th, 1954, which rejects the request of the Groupement des Industries Sidérurgiques Luxembourgeoises of July 14th, 1954 ;

consequently, to declare that the High Authority shall be bound to decree, by way of a decision or a recommendation,

(1) the suspension of the activities of the " Office Commercial du Ravitaillement " in so far as it is the sole importer of coal in the Grand Duchy of Luxemburg ;

(2) the prohibition and abolition of the " Caisse de Compensation " attached to the " Office Commercial du Ravitaillement " by Ministerial Decree of March 8th, 1954 ;

to condemn the High Authority in the costs."

By Decision of January 7th, 1955, the High Authority gave the Luxemburg Government time until March 31st, 1955

—either to repeal the Decree confirming the activity of the Office Commercial du Ravitaillement,

—or to modify the provisions thereof in order to make them consistent with the Treaty.

After two requests from Defendant for extension of the time-limit, which were granted by Order of the President of the Court on November 11th, and again on December 9th, 1954, Defendant filed on January 12th, 1955, its Counter-Memorials relating to the two above mentioned Applications.

The Counter-Memorial pertaining to Appeal 7–54 requests :

" May it please the Court

(1) to give official notice that the High Authority has chosen as its address for service, in accordance with Article 32, Paragraph 2 of the Rules of the Court, its office, 2 Place de Metz, in Luxemburg ;

(2) to give official notice that the High Authority relies on the wisdom of the Court with regard to the formal admissibility of the Application ;

(3) to declare and decide that there is no ground for a ruling by the Court with regard to the claim of the Application requesting annulment of the implicit negative decision concerning the request for

suspension of the activities of the " Office Commercial du Ravitaillement ", because this request has lost its object ;

(4) to declare and decide that there is no ground for a ruling by the Court with regard to the claim of the Application requesting annulment of the implicit negative decision concerning the request for suspension and abolition of the " Caisse de Compensation " in the matter of solid fuel, because this Application has now lost its object ;

in any case to reject on its merits the above mentioned claim of the Application ;

(5) to condemn Plaintiff to pay the expenses, costs and fees."

The Counter-Memorial pertaining to Appeal 9–54 contains the same conclusions with the exception that the last paragraph of section 4 is replaced by the following text :

" only taking into consideration the conclusions presented in so far as needed and aimed at the negative Decision deriving from the letter of the High Authority of November 27th, 1954, to reject on its merits the above mentioned claim of the Application and to reject all further submissions or submissions to the contrary ".

On January 13th, 1955, an Order of the President of the Court fixed February 15th as the time-limit for the submission of the Reply ;

On February 7th, 1955, Plaintiff requested the Court to extend this time-limit to March 25th, 1955, in order to " know what the attitude of the Luxemburg Government would be regarding this Decision "—the Decision of January 7th, 1955,—" so as to be able to expose its own opinion in the Reply " ;

An Order of the President of the Court of February 11th, 1955, complied with this request.

The Replies relating to the two Appeals were filed on March 22nd, 1955 ;

In the Reply pertaining to Application 7–54, Plaintiff submitted the following conclusions :

" May it please the Court

to reject the grounds for inadmissibility and arguments presented by Defendant ;

I—to declare formally admissible the Application containing two connected claims ;

II—A. to give Plaintiff official notice that, without prejudice to the motivation of the Decision of the High Authority of January 7th, 1955, concerning the Office Commercial du Ravitaillement, the Court considers that, following this Decision, Plaintiff's Appeal has lost its object in so far as settled by this Decision ; to condemn Defendant in the costs ;

B. (*a*) to declare that the Appeal, originally filed against the implicit negative Decision resulting from the silence of the High Authority, has remained unchanged notwithstanding the letter of the High Authority of November 27th, 1954, which is not relevant to the proceedings ;

(*b*) to declare the request well-founded ; consequently

(1) to declare that the Caisse de Compensation established by Ministerial Decree of March 8th, 1954, constitutes a special charge which is inconsistent with Article 4 *c* of the Treaty ;

(2) to declare that the Caisse de Compensation established by Ministerial Decree of March 8th, 1954, constitutes a discrimination which is inconsistent with Article 4 *b* of the Treaty ;

to declare that the functioning of the Caisse de Compensation is closely linked to the existence of the import-monopoly of the Office and that the disappearance of the latter necessarily must bring about the disappearance of the Caisse de Compensation ;

to declare that the levy, in so far as it constitutes a price increase for solid fuel not destined for household consumption, violates the Decisions of the High Authority which were taken on the ground of Article 63, paragraph 2 *a* of the Treaty, namely Decisions No. 4–53 of February 12th, 1953, 6–53 of March 13th, 1953, 15–54 of March 19th, 1954, 19–54 of March 20th, 1954 and 20–54 of March 20th, 1954 ;

(3) to declare in any case that the functioning of the Caisse de Compensation established by Ministerial Decree of March 8th, 1954, violates the most fundamental principles of the common market, such as was established by the Treaty ;

consequently :

to declare that the High Authority shall be bound to decree, by way of a decision or a recommendation, the prohibition and abolition of the Caisse de Compensation attached to the Office Commercial du Ravitaillement by Ministerial Decree of March 8th, 1954 ;

to condemn the High Authority in the expenses, costs and fees, subject to all reservations ".

The Reply pertaining to Application 9–54 submits the same conclusions, except for the two following modifications:

*First paragraph*

" May it please the Court

to join the two Applications because of their connexity ;

to reject the grounds for inadmissibility and the arguments submitted by Defendant " ;

After II—B. (*a*): addition of the following paragraph:

" subsidiarily and in case the refusal of the High Authority deriving from its letter of November 27th, 1954, must be considered as an explicit Decision, to declare admissible the Appeal against the aforesaid Decision ".

The cases 7–54 and 9–54 were joined " for all purposes of procedure " by Order of the President of the Court of March 25th, 1955.

In the Rejoinder which, following the Order concerning the junction, is the same for the cases 7–54 and 9–54, Defendant requests

" May it please the Court

to declare well-founded the conclusions previously submitted in the case."

The four following facts occurred between the filing of the Reply and the deposit of the Rejoinder :

(1) Publication of the Grand-Ducal Decree of April 2nd, 1955 which modifies the system of the import-tax and the tax on the turnover of solid mineral fuel ;

(2) Publication of the Ministerial Decree of September 12th, 1955, abrogating the Ministerial Decree of March 8th, 1954, concerning the functioning in matters of solid fuel of the Caisse de Compensation attached to the Office Commercial du Ravitaillement, becoming effective on April 2nd, 1955 ;

(3) Publication of the Ministerial Decree of September 30th, 1955, abrogating the Ministerial Decree of March 8th, 1954, concerning the import of solid fuel, which was freed while the Luxemburg Government however withheld certain rights to intervene. This decree became effective on October 1st, 1955 ;

(4) Filing, a few hours before the deposit of the Rejoinder, of an Application for Intervention from the Luxemburg Government requesting

" May it please the Court

to give official notice to the Luxemburg Government of its intervention ; to declare this intervention admissible and well-founded ; furthermore to give official notice to the intervening party that it supports the submissions of the High Authority, requesting the rejection of the Appeal of the Groupement des Industries Sidérurgiques Luxembourgeoises ; to condemn Plaintiff in the expenses and costs of the intervention."

In the written observations presented in application of Article 71, section 3 of the Rules of the Court, Plaintiff contested the " merits of the intervention " and, pursuant to Article 71, section 4, the Court examined the claim, after hearing the parties and the conclusions of the Advocate General during public hearings which were held on November 19th, 1955 ;

By order of November 24th, 1955, the Luxemburg Government was " admitted in its intervention ", whilst the " examination of the submissions and arguments presented in the Application for intervention, as well as the examination of their admissibility, were joined to the examination of the merits " ;

At the public hearings of the same day, the Court informed the parties that it would accept until December 7th, 1955, " preparatory notes for the future oral discussion, which the parties might deem useful to present following the hearings concerning the request for intervention " ;

Consequently, Plaintiff presented on December 6th, 1955, " additional observations " ;

These observations pertain in particular to the following points :

" The Groupement des Industries Sidérurgiques Luxembourgeoises rejects the reasoning developed by the High Authority in the Rejoinder and based on the fact that the Luxemburg steel industry has not " brought forward the inconsistency with the Treaty of the Grand-Ducal Decree of April 2nd, 1955 ", the economic effects of which " are identical to those of the Ministerial Decree of March 8th, 1954 ". The Groupement

declares that if it has not brought forward before now this inconsistency of the new system with the Treaty, it is because it seemed advisable to await the decision of the Court in the present dispute ;

The Groupement des Industries Sidérurgiques Luxembourgeoises sees in the " attitude of the Luxemburg Government which abolished the Caisse de Péréquation " an argument in favour of its position, because this attitude " seems to indicate that the Luxemburg Government had, to say the least, such serious hesitations regarding the previous system that it preferred to avoid a ruling by the Court " ;

The Groupement des Industries Sidérurgiques Luxembourgeoises deems possible " that one of the member States of the Community may obtain, on the ground of the reserved competences, certain economic effects, especially with a social aim, by way of a system consistent with the Treaty, while another system with the same results might not be consistent with it " ;

The Groupement des Industries Sidérurgiques Luxembourgeoises rejects also the arguments of the Luxemburg Government based on

—the lack of legal qualification of Plaintiff with regard to the particular nature of the dispute :

—the interpretation of Article 4 of the Treaty which, according to the intervening party, could not be " a sufficient ground for an Appeal, nor a sufficient basis for a ruling by the Court " ;

—the fact that " the Appeals have lost their object and that the Groupement has no interest in proceeding with them ".

After the submission of the Rejoinder on September 30th, 1955, the written procedure was closed, pursuant to Article 34, paragraph 1 of the Rules of the Court.

Pursuant to Article 34, paragraph 1 of the Rules of the Court, the President of the Court designated, on September 30th, 1955, Judge RUEFF as Judge Rapporteur.

The Judge Rapporteur has, in his preliminary report, provided for in Article 34 of the Rules of the Court, concluded that a judicial inquiry was necessary ;

The Second Chamber of the Court has by an Order read in public session on November 30th, 1955, requested the parties to send, before December 14th, 1955, several written indications ;

The parties have sent the requested indications on December 12th.

By Order of December 14th, 1955, the Second Chamber of the Court declared closed the judicial inquiry and fixed January 7th, 1956, as the time-limit, provided for in Article 45 of the Rules of the Court, for the submission of the final written conclusions of the parties ;

These conclusions were filed respectively on January 4th and 7th ; they confirmed the previous submissions.

In accordance with Article 45, section 2 of the Rules of the Court, the President of the Court fixed February 1st, 1956, as date for the oral proceedings.

Public hearings were held on February 1st, 2nd, 7th and 8th, 1956.

In the course of these hearings the Court heard the parties.

At the public session of February 8th, 1956, the Advocate General presented the following conclusions:

In the case No. 7–54

> " to reject as inadmissible the first claim of the Appeal, to declare ill-founded the second claim, to condemn Plaintiff in the costs, including those of the intervening party " ;

In the case No. 9–54

> " to reject the Appeal as inadmissible and condemn Plaintiff in the costs, including those of the intervening party ".

2.—*Concerning the grounds and arguments of the parties*

The grounds and arguments of the parties can be summarized as follows:

(1) *As for the admissibility* of case 7–54, Defendant brings forward the following arguments:

(*a*) May an Application have " for its object two distinct claims "?

Defendant asks this question in the Counter-Memorial and specifies in the Rejoinder that Plaintiff does not give any proof of the connexity between the two claims. However, Defendant declares that " he has not brought forward the formal inadmissibility of the Application instituting proceedings " and that he " preferred, in this matter, to rely on the wisdom of the Court ".

Plaintiff answers the question affirmatively and points out, on the one hand,

> " there is no Provision forbidding a party to submit several claims in its Application ; that such a ground of inadmissibility cannot be supplemented " ;

on the other hand,

> " that the two claims joined in a single Application evidently are closely linked, whatever the attitude may be of the High Authority with regard to these two claims "

and that this link authorizes Plaintiff to refer to the case-law of the Court, namely in its Judgment 1–54 ;

(*b*) Has the letter of the High Authority of November 27th, 1954, which motivates Defendant's refusal, rendered the Application inadmissible?

Defendant brings forward in the first place that such a new fact calls for " the modification of the initial submissions ", . . . " the modification of the claim and therefore of the object itself of the dispute ", . . . " the submission by Plaintiff of new grounds ", therefore a " real renewal of the proceedings ". In Defendant's opinion " the action cannot be pursued on the basis of Article 35 of the Treaty ".

In the Reply, Plaintiff upholds the admissibility of the first Application and brings forward that " the right to appeal against the implicit negative decision was secured at the end of the two month time-limit provided for in Article 35 of the Treaty ".

In the Rejoinder, Defendant does not oppose Plaintiff's answer with any new arguments. Referring to its previous Memorial, Defendant specifies that he " certainly did not intend to oppose a formal ground of inadmissibility

to Plaintiff's action "; indeed Defendant admits that "the remarks of the High Authority could in no case result in preventing the Court from ruling on the merits of the case".

Therefore this argument is submitted to the Court only because, "although it has no practical bearing on the proceedings instituted by Plaintiff, it presents, however, an interest as a principle for the executive of the Community which awaits the judgments of the Court for future reference".

(*c*) Does Plaintiff still have a legal interest in the pursuit of its action before the Court, after abrogation by Ministerial Decree of September 12th, 1955, effective on April 2nd, 1955, of the Ministerial Decree of March 8th, 1954, regarding the functioning of the Caisse de Compensation for solid fuel attached to the Office Commercial du Ravitaillement?

As the Reply was already filed in the Registry of the Court at the moment this new fact occurred, the Second Chamber asked Plaintiff, in the course of the above-mentioned inquiry:

> "whether the regulations which the Luxemburg Government substituted to the disputed system seem to correspond to what Plaintiff would have obtained if the High Authority had not rejected its request of July 14th, 1954.
>
> In case of an affirmative answer, what is, in Plaintiff's opinion, the interest which it has in the pursuit of its action before the Court?"

Plaintiff answered these questions as follows:

> "The new regime instituted by the Luxemburg Government maintains the previous special charge and distribution under a different form. However, as the Caisse de Compensation has been abolished for the future, the Appeals submitted by the Groupement have lost their object for the future;
>
> on the other hand, however, as the Luxemburg Government has maintained the Caisse de Compensation for the period prior to April 2nd, 1955, the controversial question whether the Caisse is consistent with the Treaty remains as was for the past and must be settled by the Court which has exclusive jurisdiction over this case. The interest of the Groupement in this question can be measured by the amount of the increases resulting from the compensation which would be due by the Luxemburg steel industry for the controversial period—between March 1st, 1954, and March 31st, 1955—namely 28.171.984 Belgian francs."

(*d*) Is Plaintiff qualified to institute an action considering the special nature of the dispute?

The intervening party is of the opinion that

> "Plaintiff is an association of enterprises producing steel; whilst, as far as coal is concerned, it has the characteristics of a consumers organization. The dispute instituted before the Court by the Applications of the Groupement des Industries Sidérurgiques only concerns a question pertaining to coal. The Luxemburg Government is of the opinion that only an enterprise producing coal or an association of such enterprises would be qualified to institute this action; on the

contrary this qualification does not belong to an association of enterprises which acts and only can act, in the present dispute, as an organization representing consumers ".

Plaintiff rejects this thesis and declares that

" the provisions of the Treaty concerning appeals make no distinction as to the nature of the object. One cannot speak about a " steel ", " coal ", " ore " or " scrap-iron " Appeal. The distinction proposed by the intervening party is contrary to the text of the Treaty and cannot be accepted ".

Defendant does not accept, on this point, the proposition of the intervening party. Defendant states that

" the High Authority, while it recognizes the interest that would present —in view of the present dispute—the proposition of the Luxemburg Government, prefers, however, to rely on the wisdom of the Court in this matter ".

(2) *As for the ground of violation of the Treaty,* Plaintiff brings forward that, by maintaining the Office Commercial du Ravitaillement and the Caisse de Compensation, the Luxemburg Government failed in the obligation which results for the member States from Article 86 of the Treaty and that the High Authority should have ascertained this failure by applying Article 88.

To prove the inconsistency with the Treaty of the Office and the Caisse de Compensation, Plaintiff bases its opinion, on the one hand, on Articles 3 *b*, 4 *b*, 4 *d* and 66, paragraph 7, and, on the other hand, on Article 4 *c* of the Treaty.

Plaintiff has ascertained that, following the Decision of January 7th, 1955, its Appeal " has lost its object in so far as it was settled by this decision ", there is, therefore, no need to reproduce the arguments concerning the question whether the Office Commercial du Ravitaillement is consistent with the Treaty. The arguments relating to this Office will only be summarized here in so far as they influence the corresponding question concerning the Caisse de Compensation.

The arguments brought forward by the parties concerning the Caisse de Compensation attached to the Office Commercial du Ravitaillement can be summarized as follows:

I.—The Caisse de Compensation is inconsistent with the Decisions of the High Authority based on Article 63, paragraph 2, concerning the price level for solid fuel on the common market.

Defendant, however, calls attention to the fact

" that maximum prices are imposed on the coal-producing enterprises and that the fixation of maximum prices does not prevent the products being subject to taxes, levies or any other general charge at the moment of their consumption or at any stage of the distribution ".

II.—The abolition of the Office Commercial du Ravitaillement removes the material and legal basis for the Caisse de Compensation and must bring about the disappearance of the latter.

According to Plaintiff, " the Office can only increase the price of fuel when it buys and sells this fuel itself, that is to say when it possesses the import monopoly in the Grand Duchy of Luxemburg " ;

Therefore " it follows from the preamble of the Decision of the High Authority of January 7th, 1955, that the High Authority . . . had the intention to abolish the import monopoly for solid fuel detained by the Office ".

" Consequently . . . the disappearance of the import monopoly of the Office removes the material and legal basis of the Caisse de Compensation and must bring about, consequently, the disappearance of the latter ".

Defendant answers that its decision of January 7th, 1955, which declares the functioning of the Office inconsistent with the Treaty, " has nothing to do with the legality of the perequation of household fuel ", because " the abolition of the monopoly, requested by the High Authority, included the necessity of modifying the system of receipt but certainly did not include the necessity of suppressing the perequation system ".

III.—The Caisse de Compensation is inconsistent with the basic principles of the common market.

This argument was only brought forward in the Reply. Plaintiff sets forth that

> " the basic principles of the common market such as it was conceived by the Treaty, must procure, as a practical result, the same pithead price for all the consumers of the common market who buy the same product of the Community from the same producer "
>
> . . . .
>
> " (to this pithead price) [may be added] to form the delivery price, only the real transport costs and the fiscal duties existing in each member State may be added to this pithead price ".

And, in Plaintiff's opinion, " the levy cannot be considered as a fiscal duty ".

While making all reservations as to the admissibility of this argument which was not brought forward in the Applications—these reservations being based upon Articles 22 of the Statute of the Court and 29 of the Rules of the Court—Defendant replies, in the Rejoinder, that

> " nothing prevents Member States from imposing taxes or duties upon the industries or the products of the Community in order to use all or parts of the receipts thereof for the subvention of household fuel ".

And Defendant declares not to see

> " why a purely fiscal system would be acceptable while, on the contrary, a perequation system having altogether comparable if not identical economic effects should be considered inconsistent with the Treaty."

IV.—The perequation system instituted by the Caisse de Compensation violates Article 4 *c* of the Treaty.

In its letter of July 14th, 1954, to the High Authority, and later in the Application, Plaintiff sets forth that the establishment of the Caisse de Compensation for solid fuel " involved the imposition of a special charge upon the consumers of solid fuel other than household fuel ".

This thesis is developed in the Reply where Plaintiff studies separately the effects of the levy where it concerns metallurgic coke and where it concerns industrial coal:

(*a*) As for metallurgic coke, Plaintiff, with the help of figures, states that " the levy only affects the Luxemburg steel industry, as this one is practically the only consumer of this kind of coal in the Grand Duchy of Luxemburg "; and that, therefore, " it was the purpose of the Luxemburg Government to impose the financing of the subvention of solid household fuel only upon the Luxemburg steel industry, through the institution of a perequation levy upon metallurgic coke."

(*b*) As for imported industrial coal, Plaintiff states that the levy " affects the exploitation of enterprises of the industries provided for in Article 80 of the Treaty, namely the industries producing industrial coal which sell this kind of fuel to the industry of the Grand Duchy of Luxemburg ". And it " affects those enterprises in their capacity as competitors with liquid fuel ".

It is, therefore, Plaintiff's opinion that " an intervention of the State in the matter of prices of the products of the Community by way . . . of special charges " constitutes " an intervention which is, in itself, prohibited by the Treaty ".

Defendant replies that:

—as far as the coal industry is concerned, it cannot be subjected to a special charge, because this industry " does not exist in Luxemburg ";

—where the steel industry is concerned, it is not the only one to be affected by the levy, because it is imposed upon all the coal-consuming industries of Luxemburg. Defendant concludes that the levy " undeniably has the character of a general charge ";

—the levy cannot, " owing to its very limited amount, affect the conditions of competition on the common market ".

In the Rejoinder, Defendant, while admitting that, " because of the industrial structure of Luxemburg, the charges which affect the industrial consumers, in reality and essentially affect, in a considerable proportion, the steel industries ", rejects the conclusion " that the economic structure of Luxemburg prohibits the Government from taking economic measures, including fiscal measures, applying to industries, because they would all have to be assimilated to special measures affecting the steel industry and would, therefore, have to be prohibited ".

Apart from the refutation of Plaintiff's arguments, Defendant gives the interpretation of various points of the Treaty which it deems consistent with the will of the drafters of the Treaty and capable of clarifying the question whether the Caisse de Compensation is consistent with the Treaty :

—Defendant proposes in the first place a criterion that makes it possible to distinguish special charges from general ones : " In the first place this subsidy, aid or charge should present a special character, that is to say it should concern exclusively enterprises or products of the Community ". . . " As soon as the subsidy, the aid or the charge concerns a category of enterprises or products which extends beyond while including the enterprises and the products of the Community, one is confronted with a general measure which only depends on the eventual application of Article 67 of the Treaty ".

—Defendant makes a distinction " between the subsidies, aids or charges concerning the enterprises and those concerning the products of the Community ". In the second case, " any subsidy, aid or special charge

applicable to a product of the Community at any point of its channel of distribution will be prohibited only if its indirect consequence is either to disrupt competition, or to involve a favour or an advantage for enterprises of the Community ".

—Finally, Defendant justifies its restrictive interpretation of Article 4 *c* of the Treaty with two arguments based, one on section 11 of the Convention containing the transitional provisions, the other on the " retained competence of the member States, especially in fiscal matters ".

The first argument, an argument " a contrario ", is based upon the fact that " the said provision pertains only to charges imposed upon the products of the Community ".

The second argument is based upon the finding that the member States have the right to increase or establish levies and taxes, " even when they are laid solely upon the products of the Community "; it is thus " permissible to impose upon those products a levy of a non-fiscal character, which, on the one hand, would have the same economic effects and, on the other hand, would not be inconsistent with the other prohibitions of Article 4 ".

V.—The perequation system instituted by the Caisse de Compensation violates Article 4 *b* of the Treaty.

Plaintiff states that " the establishment, in the Grand Duchy of Luxemburg, of a Caisse de Compensation for solid fuel has brought about . . . the establishment of a discrimination between the consumers of solid fuel other than household fuel in the European Coal and Steel Community and the Luxemburg consumers of that kind of fuel . . ."

The Reply states that this discrimination is prohibited by Article 4 *b* (special charges) and not by Article 67—actions of a member State liable to cause serious disturbance.

Indeed, the imposition :

(*a*) is not a tax: its purpose is not to " cover the totality of public expenses ", because the Ministerial Decree of March 8th, 1954, " assigns to it a special and exclusive affectation ";

(*b*) " nor can it be considered as a levy, as the latter consists of an imposition upon certain individuals as counterpart for a performance accomplished for their benefit by the Administration ".

Furthermore, those expressions are not used in the text which is a decree, " while according to Luxemburg law a levy can only be imposed by a law in application of Article 99 of the Constitution ".

Therefore, in Plaintiff's opinion, " the impositions established under those circumstances have the character of a price and . . . consequently, the perequation imposition constitutes nothing else but an increase in prices ".

The Counter-Memorial rejects the argument based upon Article 4 *b*, on the ground that the imposition constitutes a general charge permitted by Article 4 *c* and that the differences in general charges existing between the countries of the Community do not constitute the discrimination prohibited by Article 4 *b*.

Defendant also states that " one can never consider as a discrimination the fact that a general action of one of the member States does not correspond with the general action of the other member States ". . . " Especially in fiscal and in social matters substantial differences exist between the laws of the member States ", because the member States retained their sovereignty in these fields.

On account of this fact

—Article 26 of the Treaty assigns a mission of harmonization to the Council of Ministers;

—Article 67 of the Treaty empowers the High Authority to intervene " in case the national action in economic matters had a repercussion upon competition in the coal and steel industries ".

To these arguments Defendant adds in the Rejoinder its own interpretation of the notion of discrimination. For Defendant " the notion of discrimination prohibited by Article 4 . . . such as it is specified, among others, by Article 60, section 1, in matters of price, and by Article 70, paragraph 1, in matters of transport, implies a difference of treatment of people placed in comparable situations. The difference of treatment therefore ceases to constitute a prohibited discrimination when it is justified by a difference in the respective situations of the interested parties ".

And, " the Governments, because they are sovereign in matters of general economic policy, can apply different treatments to categories of populations which are different from an economic and social point of view ".

In short, it is important for Defendant to examine " whether the difference of treatment established by a government among different categories of people, as a result of its economic policy, affects the competition on the market ".

Defendant's interpretation is complemented by the following answer to the questions asked during the judicial inquiry:

> " The principal interventions of the High Authority in matters presenting a certain analogy with the object of the present dispute have been the following:
>
> (1) By Decision No. 25–53 (*Official Gazette of the Community, March 13th,* 1953, *p.* 83)[1] based on section 11 of the Convention containing the transitional provisions, the High Authority decided to abolish, to reduce or to maintain, under specific conditions, certain special charges imposed upon the German coal-mines. By Decision No. 17–54 of March 20th, 1954 (*Official Gazette of the Community, March 24th,* 1954, *p.* 266)[1] the High Authority decided to abolish all special charges imposed upon the German coal-mines, including those pertaining to reductions of prices for deliveries of household fuel.
>
> This abolition was decided in application of section 11 of the Convention and Article 4 *c* of the Treaty because those charges

[1] This reference applies to the German, French, Italian and Dutch editions of the Official Gazette of the European Coal and Steel Community, published in Luxemburg.

were special charges imposed upon enterprises of the Community. There is no contradiction between these Decisions and the High Authority's stand concerning the request of the Groupement des Industries Sidérurgiques Luxembourgeoises.

(2) In France, a Ministerial Decree of March 30th, 1953, established a system of perequation for household fuel imported from other countries of the Community. This matter formed the object of an Appeal to the Court of Justice by the Belgian Government (Case 4–53): this Appeal was later withdrawn. Following the intervention of the High Authority, certain substantial modifications were applied to the French system in order to eliminate certain discriminations inconsistent with the Treaty.

(3) By Decisions No. 29–53 (*Official Gazette of the Community, May 21st,* 1953, *p.* 129)[1] and No. 23–54 (*Official Gazette of the Community, March 31st,* 1954, *p.* 293)[1] of March 30th, 1953, and March 29th, 1954, the High Authority authorized the Government of the Netherlands, on the ground of section 24, paragraph 3 of the Convention containing the transitional provisions, to maintain until March 31st, 1955, a perequation system, funds for which were provided by an imposition on the Dutch production of coal.

A similar authorization was not needed for the Caisse de péréquation in Luxemburg, as the funds for this Caisse were obtained by an imposition upon the national production of coal and did not, therefore, require an authorization from the High Authority on the ground of the above-mentioned section 24.

(4) In April 1954, the French Government issued a Decree with the purpose of compensating the distortion resulting from the difference between the internal and international freight for river transport. The High Authority pointed out that the above-mentioned system contained discriminatory elements inconsistent with the Treaty. Following an exchange of letters, and after consulting the Council of Ministers, on the ground of section 2, 4 of the Convention, the French Government, accepting the point of view of the High Authority, modified the above-mentioned Decree in order to eliminate from the perequation system, which it had instituted, any element inconsistent with the Treaty."

(3) *As for the ground of major violation of procedure,* Plaintiff brings forward "subsidiarily . . . that the implicit negative decision is vitiated because of major violation of procedure, in so far as it is not based upon expressed motives". As Defendant's explicit refusal was given before it submitted the Counter-Memorial, the High Authority did not formally express its view on this point: Defendant only pointed out that the decision requested by Plaintiff was "now explicitly and sufficiently motivated, as the High Authority had clearly set forth in its letter of November 27th, 1954 . . . the legal reasons why it cannot accept the point of view of the Groupement".

[1] This reference applies to the German, French, Italian and Dutch editions of the Official Gazette of the European Coal and Steel Community, published in Luxemburg.

*As Regards the Law :*

The Court bases its judgment on the following considerations:

## A.—CONSEQUENCES OF THE JOINING OF THE APPEALS No. 7–54 AND No. 9–54

The Order of March 25th, 1955, joining the Appeals 7–54 and 9–54 does not prevent their separate examination in the present judgment ;

PART ONE: *Appeal No.* 7–54

## B.—CONCERNING THE ADMISSIBILITY OF APPEAL No. 7–54

*(I) As for the regularity of the procedure :*

Plaintiff joined to the Application the copy of the letter which it addressed on July 14th, 1954, to the High Authority and this date has not been contested by Defendant ; this document can therefore be considered as " the documentary evidence showing the date of filing of the request " provided for in Article 22, paragraph 2, of the Rules of the Court.

The Application, filed less than a month after the expiration of the two-month time-limit provided for in Article 35 of the Treaty, was submitted within the legal time-limit.

The Court deems, in accordance with the conclusions of the Advocate General, that the two claims joined in the Application are manifestly connected.

The presentation of these two claims in one single Application could not impair the admissibility of the latter.

Furthermore, Defendant does not bring forward the " formal inadmissibility " of the Application and relies on the wisdom of the Court on this point.

*(II) As for the question whether Plaintiff is entitled to apply to the High Authority in pursuance of Article 35 of the Treaty :*

Application 7–54 requests annulment of the implicit negative decision presumed to result, in accordance with Article 35 of the Treaty, from the silence kept by the High Authority during two months following the request submitted by Plaintiff in its letter of July 14th, 1954.

The expression " as the case may be " in Article 35 must be understood as attributing competence, to appeal to the High Authority, to those bodies enumerated in this Article which have an interest in the decision which the High Authority should take or in the recommendation which it should formulate.

Without doubt Plaintiff has an interest in the decisions requested from the High Authority by Plaintiff's letter of July 14th, 1954.

Furthermore, Article 35 gives " enterprises and associations " the competence to apply to the High Authority ;

The associations provided for in that expression can only be associations of enterprises, in the sense given to the expression " enterprise " by Article 80 of the Treaty and for the Treaty as a whole ;

Indeed, were it not so, an association would be empowered to appeal to the Court, which none of its members could have done separately and on their own ;

As the opposite is not expressly stated, it must be assumed that the Treaty does not establish such a disparity of treatment between an association and its members.

The Groupement des Industries Sidérurgiques Luxembourgeoises, Plaintiff, is indeed an association of enterprises because it groups in a co-operative firm enterprises engaged in the production of steel within one of the territories mentioned in the first paragraph of Article 79.

Paragraph one of Article 35 empowers the States, the Council or the enterprises and associations to apply to the High Authority only when the latter is required by the Treaty or by Regulations for its execution to take a decision or to formulate a recommendation and when it fails to fulfil this obligation.

Plaintiff brings forward that Articles 86 and 88 of the Treaty imposed upon the High Authority the obligation to take a decision or to formulate a recommendation concerning the Caisse de Compensation attached to the Office Commercial du Ravitaillement ;

By Article 86 the member States have agreed to refrain from all measures inconsistent with the existence of the common market referred to in Articles 1 and 4 ;

Article 88 requires the High Authority, when it " considers that a State has failed in one of the obligations incumbent upon it by virtue of this Treaty ", to ascertain the failure in a motivated decision ;

On this ground the High Authority would have been required by a provision of the Treaty to take a decision if it had deemed the Caisse de Compensation inconsistent with the existence of the common market referred to in Articles 1 and 4.

Plaintiff is therefore entitled to appeal to the High Authority by virtue of the first paragraph of Article 35.

(*III*) *As for the question whether Plaintiff is entitled to appeal to the Court against the implicit negative Decision which is supposed to result from the silence of the High Authority :*

Plaintiff requests

" May it please the Court

to annul the implicit negative Decision of the High Authority which arose after the submission on July 14th, 1954, of a letter from the Groupement des Industries Sidérurgiques Luxembourgeoises " :

Plaintiff is of the opinion that " this implicit negative Decision is vitiated because of violation of the Treaty and, subsidiarily, because of major violation of procedure " ;

The Appeal submitted by Plaintiff in pursuance of the third paragraph of Article 35 of the Treaty is therefore an Appeal for annulment on the grounds of violation of the Treaty and major violation of procedure as provided for in Article 33 of the Treaty and consequently subject to the conditions of said Article.

By virtue of Article 33, paragraph 2, the enterprises and associations provided for in Article 48 can submit such an Appeal; furthermore, Plaintiff can be considered to be one of the associations provided for in said Article. It is not necessary to determine here whether the condition of this provision applies in case of an Appeal submitted in pursuance of a provision of the Treaty other than Article 35.

The Luxemburg Government however, in its Application for intervention, stated that Plaintiff, although falling, in other respects, under the competence of the Community, is not entitled to appeal to the Court on account of the particular character of the dispute.

The Luxemburg Government bases its statement on the fact that the dispute before the Court exclusively concerns a coal-question, that only an enterprise producing coal or an association of such enterprises is entitled to appeal to the Court, that, on the contrary, this competence does not belong to an association which acts and can only act, in the present case, in its capacity as an association representing consumers.

As for the admissibility of the arguments put forward by the intervening party, Defendant relies on the wisdom of the Court;

In accordance with Article 34 of the Statute of the Court, the submissions of the Application for intervention can only sustain or reject the submissions of one of the parties.

There is no need, however, to investigate whether the intervening party was entitled, considering Article 34 of the Statute of the Court, to contest the admissibility of the Appeal, because this admissibility has to be examined ex officio.

In accordance with the conclusions of the Advocate General, the Court is of the opinion that there is no provision in the Treaty requiring the specialization of the producer to be connected with the speciality of the dispute.

The silence of the Treaty on this point cannot be interpreted in a manner detrimental to the enterprises and associations.

Consequently, Plaintiff's right to appeal to the Court in the present case cannot be contested.

Plaintiff has not put forward that the contested implicit negative Decision was vitiated by détournement de pouvoir towards him; consequently, Plaintiff can only appeal against this Decision if it is an individual decision concerning Plaintiff.

This requirement implies two distinct characteristics for the contested decision: it must be individual and it must concern Plaintiff;

By stipulating that only individual decisions are susceptible of annulment following Appeal from enterprises and associations when based on other grounds than détournement de pouvoir towards them, the Treaty has denied private persons the right to appreciate general decisions and recommendations in all the cases where détournement de pouvoir towards them is not brought forward;

Under these conditions, in order that an Appeal may be submitted against a decision or recommendation by an enterprise or an association, it suffices that this decision or recommendation be not general but of an individual character, while it does not have to be such with regard to Plaintiff.

The implicit negative Decision which is supposed to result from the silence of the High Authority can only be considered as a refusal to take the Decision requested by Plaintiff in the letter of July 14th, 1954 ;

This implicit Decision is therefore supposed to state that there is no reason to establish, by way of a motivated decision, that the Government of the Grand Duchy has failed to fulfil one of the obligations incumbent upon it by virtue of the Treaty when, by Decree of March 8th, 1954, it authorized the Office Commercial du Ravitaillement to increase the prices of solid fuel other than household fuel ;

This Decision is an individual decision because it only relates to a specific activity of a public institution designated by name, i.e. the Office Commercial du Ravitaillement.

Furthermore, the implicit negative Decision contested by Plaintiff authorizes the continuation of a system which imposes upon the enterprises forming the Groupement des Industries Sidérurgiques Luxembourgeoises an extra levy of 8 francs per ton of coal consumed by these enterprises and on that ground it concerns a Groupement which was formed in order to " carry out . . . all operations considered commercial by law, with the aim of ensuring the smooth running and development of the Luxemburg steel industry and particularly of the industry of its associates ".

For these reasons the implicit negative Decision, which Plaintiff requests be annulled, constitutes in the present case an individual decision, it concerns Plaintiff and the latter is therefore entitled to appeal against it.

*(IV) As for Plaintiff's interest to pursue the case after a Ministerial Decree of September 12th, 1955, effective on April 2nd, 1955, abrogated the Ministerial Decree of March 8th, 1954, concerning the functioning of the Caisse de Compensation attached to the Office Commercial du Ravitaillement :*

In its answer to the questions asked during the legal inquiry, Plaintiff states that because the Luxemburg Government maintained the Caisse de Compensation for the period prior to April 2nd, 1955, the contested question, namely whether the Caisse is consistent with the Treaty, remains unaltered for the past ;

According to the Rejoinder, Defendant relies on the wisdom of the Court on that point ;

The Court is of the opinion that Plaintiff has an interest in the pursuance of its court action.

On the ground of the above-mentioned reasons, the Court deems the Appeal admissible.

## C.—AS FOR THE MERITS OF APPEAL No. 7-54

(I) *Concerning the object of the Appeal :*

(a) *Plaintiff's request for the suspension of the activities of the Office Commercial du Ravitaillement :*

On January 7th, 1955, that is after the submission of the Application, the High Authority took a Decision stating that the Decree of the Minister of Economic Affairs of the Luxemburg Government, of March 8th, 1954, maintaining the activity of the Office Commercial du Ravitaillement in matters of import of solid fuel, constitutes a measure inconsistent with the Treaty ;

Plaintiff and Defendant agree that this Decision can be considered as the positive result of the Appeal with regard to the claim concerning the Office Commercial du Ravitaillement ;

Consequently, regarding this claim the Appeal has lost its object.

(b) *Consequences of the letter of the High Authority of November 27th, 1954, motivating, after expiration of the two-month time-limit, the refusal of the High Authority to take the decision requested by Plaintiff concerning the Caisse de Compensation :*

In the Counter-Memorial the High Authority states that the letter of November 27th, 1954, has transformed its silence into an explicit and sufficiently motivated refusal ;

Under these conditions, the Application submitted on the basis of Article 35 is, according to Defendant, without legal grounds and without object.

The letter stating the motives of the High Authority was sent after the expiration of the two-month time-limit provided for in the third paragraph of Article 35 ;

At the end of that time-limit, the implicit negative decision referred to in that paragraph was supposed to exist and the right to appeal was definitely acquired by Plaintiff.

Furthermore, the object of the Appeal is not the silence of the High Authority, but its refusal to take the Decision—in the sense of Article 14 of the Treaty—which, according to Plaintiff, the High Authority was bound to take ;

The letter stating the motives of the refusal of the High Authority does not affect the existence of that refusal, which definitely existed at the end of the two-month time-limit provided for in the third paragraph of Article 35 of the Treaty ;

The implicit negative Decision which, at the end of that time-limit, is supposed to result from the silence of the High Authority does not substantially alter the resulting situation, but only gives it a positive expression in order to make it possible to appeal against it on the basis of the third paragraph of Article 35 ;

Nor did the letter of November 27th, 1954, alter this situation :

Under these conditions, the Court, in accordance with the conclusions of the Advocate General, deems that said letter has not suppressed the object of the Appeal, nor prevented Plaintiff from pursuing its action based on Article 35 of the Treaty.

(*II*) *Concerning the consistency of the Caisse de Compensation with the provisions of the Treaty :*

Plaintiff contests the implicit negative Decision of the High Authority concerning the Caisse de Compensation on the following grounds: violation of the Treaty, in particular of Articles 4 *b* and 4 *c* and, subsidiarily, major violation of procedure in so far as the decision is not based on expressed motives.

Both grounds have to be examined separately.

1.—**The ground of violation of the Treaty**

(a) *Is Article 4 directly applicable or only " in accordance with the provisions of the present Treaty "?*

According to Article 4, the practices enumerated in sections *a, b, c* and *d* are " inconsistent with the common market and therefore abolished and prohibited in accordance with the provisions of the Treaty " ;

Some of these practices are referred to in other provisions of the Treaty, namely : any action by a member State that might have appreciable repercussions on the conditions of competition in the coal and steel industries, in Article 67 of the Treaty, and the special charges, in paragraph 3 of said Article and in sections 11 and 25, third paragraph of the Convention containing the Transitional Provisions ;

According to Article 84 of the Treaty, the expression " this Treaty " must be understood as referring to the clauses of the Treaty and its annexes, of the annexed Protocols and of the Convention containing the Transitional Provisions ;

Therefore all the provisions contained in those texts have the same binding value and there can be no question of opposing those texts to each other ; they can only be considered simultaneously in order to be adequately applied ;

In its Judgment 1–54, II *a,* the Court decided that " the Articles 2, 3 and 4 of the Treaty . . . constitute fundamental provisions establishing the common market and the common objectives of the Community . . . and when giving the High Authority competence to define prohibited practices, the Treaty compels it to take into account all the objectives prescribed by the Articles 2, 3 and 4 " ;

For the same reasons the provisions of Article 4 are sufficient in themselves and directly applicable when they are not elaborated in other parts of the Treaty ;

On the contrary, when the provisions of Article 4 are referred to, elaborated or regulated in other parts of the Treaty, the texts referring to one and the same provision must be considered together and simultaneously applied.

(b) *Is the imposition made by the Caisse de Compensation a special charge prohibited by Article 4 c of the Treaty?*

Article 4 *c* prohibits special charges in any form imposed by the States ;

It is necessary to determine the criterions which will make it possible to distinguish a special charge abolished and prohibited by Article 4 *c,* under the conditions provided for namely in Article 67, paragraph 3 ;

The Treaty does not specify the elements that establish the speciality of a charge, but, in Article 67, paragraph 3, it gives the example of a charge which it calls special because it is imposed upon the coal and steel enterprises falling under the jurisdiction of a State in comparison to other industries of the same country ;

It is clear that the speciality of that charge is based upon the fact that it only affects a fraction of the industries which fall under the jurisdiction of the same State and are, consequently, in a comparable situation in so far as that State is concerned.

However, the comparability of situations only constitutes a relative and changing criterion because it depends upon the scope of the field to which it applies ;

A charge which is general for all the enterprises of a State could cease to be such and become special when considering all the enterprises of the Community ;

Under these conditions, it is advisable, in case of doubt, to strengthen the criterion of comparability by checking the results to which it leads against those intended by the Treaty.

Article 2 of the Treaty assigns as aim to the Community, among others, the progressive establishment of conditions which will in themselves assure the most rational distribution of production at the highest possible level of productivity, while safeguarding the continuity of employment and avoiding the creation of fundamental and persistent disturbances in the economies of the member States ;

Article 67 further specifies this requirement by authorizing the High Authority to compensate the harmful effects of the action of the member States when this action is liable to provoke a serious disequilibrium through a substantial increase of the differences in costs of production otherwise than through variations in productivity ;

From this it results, a contrario, that the Treaty authorizes the action of the member States when it does not substantially increase the differences in costs of production or when it increases them through variations in productivity ;

According to this provision, the most rational distribution of production referred to in Article 2 is the one that is based, among others, on the gradation of the production costs resulting from productivity, that is to say from the physical and technical conditions particular to the various producers ;

Thus a first examination reveals, although this criterion alone cannot be considered decisive, that a charge can be assumed special, and therefore abolished and prohibited by the Treaty, when it introduces in the distribution of production distortions which do not result from variations of productivity, while unequally affecting the production costs of producers which are in a comparable situation.

It is necessary to examine whether the imposition made by the Caisse de Compensation, in application of the Ministerial Decree of March 8th, 1954, is, on the basis of the above-mentioned criterions, a special charge in the sense of the Treaty.

By virtue of Article 1 of the said Decree, the Office Commercial du Ravitaillement is authorized to increase the prices of solid fuel other than household fuel whatever its origin, sort or consumer.

The charge imposed upon solid fuel other than household fuel could be special if it affected only a part of the enterprises falling under the jurisdiction of the Government of the Grand Duchy of Luxemburg ; it would then be what the parties agreed on calling a charge upon the enterprises ;

It can be noticed that in that case the charge would indeed affect the gradation of the costs of production otherwise than through variations of productivity.

However, the increase imposed by the Caisse concerns solid fuel other than household fuel whatever its sort or consumer, and equally affects all consumers of solid fuel other than household fuel and therefore evidently is not a special charge on the ground of that criterion ;

Metallurgical coke which, on the same ground, is hit like the other sorts of fuel is therefore not affected by a special charge, notwithstanding the fact that the steel industries are the most important, if not the only, consumers of that product.

However, the imposition upon solid fuel other than household fuel, in the Grand Duchy of Luxemburg, could also be special if it affected only a part of the solid fuel other than household fuel consumed by the Luxemburg economy and in that case it would be the charge that the parties have called the charge upon the products ;

The effect of such a charge would indeed be to modify for the Luxemburg consumers of coal other than household coal the gradation of the costs of production resulting from productivity, and consequently to introduce distortions in the distribution of their sales within the common market.

However, the price increase imposed by the Caisse de Compensation affects in Luxemburg all solid fuel other than household fuel whatever its origin ;

Therefore it affects equally all the producers of the Community who sell coal other than household coal in Luxemburg, just as it would affect producers in the Grand Duchy, supposing coal mines would be discovered there and exploited ;

Also on the ground of this criterion, the charge imposed by the Ministerial Decree of March 8th, 1954, is not a special charge.

In the present case it does not appear that the charge imposed by the Caisse de Compensation could be considered a special charge on the ground of other criterions ;

Under these conditions, the Court is of the opinion that it is not a special charge abolished and prohibited by Article 4 *c* of the Treaty.

(c) *Does the charge imposed by the Caisse de Compensation constitute a measure or practice which establishes a discrimination abolished and prohibited by Article 4* b *of the Treaty?*

The Treaty abolishes and prohibits measures and practices which establish a discrimination among producers, among buyers or among consumers ;

The concept of discrimination is defined in Article 60 of the Treaty which declares discriminatory any practices involving the application of unequal conditions to comparable transactions within the common market ;

Even when it is not special, a charge can directly or indirectly bring about discriminatory effects among producers, among buyers or among consumers ;

It is therefore necessary to examine whether the imposition made by the Caisse de Compensation must be considered as a measure or practice which establishes a discrimination abolished and prohibited by the Treaty.

According to Plaintiff, the imposition made by the Caisse de Compensation constitutes a measure which establishes a discrimination between the consumers of metallurgical coke and of industrial coal established in Luxemburg and the consumers established in the other member States ;

It it true that the price increase of solid fuel other than household fuel imposed by Ministerial Decree of March 8th, 1954, normally affects only the Luxemburg consumers of this fuel and not the consumers in the other member States ;

It therefore establishes a difference between the costs of production of each of those categories ;

This difference could only disappear through the abolition of this price increase within the Grand Duchy or through the establishment of a similar price increase in the other member States.

The abolition and prohibition of special charges does not affect the right of the member States to impose general charges upon their nationals ;

It is of little importance whether the charge is imposed under the form of a tax or a levy or under the form of an imposition for perequation with the same economic effects and the same financial consequences ;

Several provisions of the Treaty, especially in Article 62 and in sections 24 and 25 of the Transitional Provisions, make it possible to establish for certain purposes national funds or systems for compensation or for perequation impositions.

Furthermore, the Court, in accordance with the conclusions of the Advocate General, is of the opinion that the Government of the Grand Duchy, although the Treaty does not deprive it of the right to impose a general charge upon the consumers of coal falling under its jurisdiction, is obviously not competent to extend this charge to the consumers of the other member States ;

There is no provision in the Treaty that provides for the equalization of the charges imposed by the member States in the fields falling under their respective jurisdiction ;

On the contrary, Article 26 proves that the Treaty has not deprived the member States of their responsibility for the general economic policy as it instructs the Council " to harmonize the action of the High Authority and that of the governments which are responsible for the general economic policy of their countries " ;

It follows from Article 67 that any action by a member State which might have appreciable repercussions on the conditions of competition in the coal and steel industries falling under the jurisdiction of the Community, is not necessarily abolished and prohibited by the Treaty and therefore does not necessarily constitute a measure or practice which establishes a discrimination prohibited by Article 4 *b* of the Treaty ; indeed Article 67 authorizes the High Authority to compensate, through the grant of an aid, and therefore to tolerate and practically to authorize under certain conditions the harmful effects of these repercussions on competition.

Furthermore, Article 67, which is very carefully worded, provides only for an intervention of the High Authority with regard to actions by member States which have " appreciable " repercussions on the conditions of competition in the coal and steel industries or which are liable to give rise to a " serious disequilibrium " by " substantially " increasing differences in the costs of production otherwise than through variations of productivity.

From the above-mentioned reasons it follows that the Treaty admits that the abolition and prohibition of discriminatory measures and practices, provided for in Article 4 *b*, cannot result in the establishment of an absolute equality

of the conditions of competition prevailing in the coal and steel industries falling under the jurisdiction of the Community ; nor could it result in the abolition of all repercussions on the conditions of competition which follow from the intervention of member States which substantially increase the differences in the costs of production otherwise than through variations of productivity ;

The persistence of differences in the conditions of competition is the necessary and inevitable consequence of the incomplete nature of the integration realized by the Treaty, and it does not imply a discrimination prohibited by the Treaty ;

Article 67 confirms this interpretation since it gives the High Authority the competence to compensate, that is to annul, the effects of the repercussions on competition which the Treaty has not abolished, and thus to prevent these interferences with competition, because they have survived the institution of the common market, from jeopardizing the mission which Article 2 has entrusted to the Community " in harmony with the general economy of the member States ".

On the ground of the above-mentioned principles, it is necessary to examine whether the price increase of solid fuel other than household fuel, resulting from the Ministerial Decree of March 8th, 1954, constitutes a measure or practice which establishes among consumers a discrimination abolished and prohibited by Article 4 *b* of the Treaty.

The form in which the levy was imposed upon the consumers of solid fuel other than household fuel does not make it possible to judge whether it is a discriminatory measure or practice prohibited by Article 4 *b* of the Treaty ;

Under these conditions, it is of little importance to know whether it constitutes a tax, a levy or a price increase.

The Court is of the opinion that the Treaty does not prohibit the price increase resulting from the Ministerial Decree of March 8th, 1954, and that its effects are necessarily limited to the territory of the Grand Duchy of Luxemburg ;

The most the High Authority could have done, had it deemed that the action of the Luxemburg Government produced harmful effects for coal and steel enterprises falling under the jurisdiction of said Government, was to authorize this Government to grant an appropriate aid to those industries ;

The High Authority was of the opinion that the imposition made by the Caisse de Compensation " cannot affect competition, neither for the sales of coal, nor for the sales of steel products, because of its small repercussion upon the cost price of the steel produced by the Luxemburg steel industry ;

Plaintiff contests this statement and is of the opinion that, as the price of metallurgical coke represents about 30% of the cost price of steel products, the increase in price has, through its very grave influence upon the cost price of those products, appreciable repercussions on the conditions of competition between the Luxemburg producers and those of the other countries of the Community.

In the present dispute, Plaintiff reproaches the High Authority neither with having committed a détournement de pouvoir nor with having obviously misinterpreted the provisions of the Treaty or of a rule of law relating to

its application ; the Court must therefore limit itself to examine whether, as regards the law, the price increase imposed upon solid fuel other than household fuel by the Ministerial Decree of March 8th, 1954, violates the Treaty or any rule of law relating to its application ;

From the above-mentioned considerations it follows that, by applying to solid fuel other than household fuel the price increase resulting from the Ministerial Decree of March 8th, 1954, the Luxemburg Government has taken a measure which is part of the general economic policy for which it remains responsible on the ground of Article 26 of the Treaty ; it also follows that this measure is not a discriminatory practice prohibited and abolished by Article 4 *b* of the Treaty.

(d) *Was the abolition of the import monopoly accorded to the Office Commercial du Ravitaillement to result necessarily in the abolition of the Caisse de Compensation attached to it?*

The Ministerial Decree of March 8th, 1954, which authorized the Office Commercial du Ravitaillement to increase the prices of solid fuel other than household fuel, states in its title that the Caisse de Compensation is attached to the Office Commercial du Ravitaillement ;

The Ministerial Decree of March 8th, 1954, which corroborates the activities of the Office Commercial du Ravitaillement in matters of import of solid fuel, was abrogated by Ministerial Decree of September 30th, 1955.

In the Reply, Plaintiff concludes that the abolition of the import monopoly of the Office Commercial du Ravitaillement must result in the abolition of the Caisse de Compensation.

The question of the legality of the contested perequation system with regard to the Treaty, on the one hand, and the question of the monopoly accorded to the organization which was entrusted with the care of this system of perequation, on the other hand, constitute two independent problems ;

Therefore the Decision of the High Authority of January 7th, 1955, which declares the Decree of the Minister of Economic Affairs of the Luxemburg Government of March 8th, 1954, corroborating the activity of the Office Commercial du Ravitaillement, inconsistent with the Treaty, could not influence the consistency with the Treaty of the Caisse de Compensation, the abolition of which the High Authority refused to request.

(e) *Does the imposition made by the Caisse de Compensation violate the Decisions of the High Authority which, in application of Article 63, paragraph 2 a of the Treaty, fixed maximum prices for metallurgic coke and industrial coal produced by certain coal-basins?*

Plaintiff brings forward that the price increase imposed by the Caisse de Compensation is inconsistent with Decisions 15–54, 19–54 and 20–54 of the High Authority, concerning the establishment of the lists of prices applicable to coal from certain coal-basins.

Maximum prices are imposed upon coal-producing enterprises and the fixing of maximum prices does not prevent the imposition of taxes, levies or any other general charge upon the products at the moment of consumption or at whatever period of the distribution ;

Under these conditions, the imposition made by the Caisse does not violate the Decisions of the High Authority which fix maximum prices.

(f) *Is the Caisse de Compensation inconsistent with the basic principles of the common market?*

According to Plaintiff, the existence and activity of the Caisse de Compensation is in opposition with the fundamental principles of the common market ;

Plaintiff bases its opinion on the statement that the perequation imposition constitutes a system of double pricing which is unfavourable for the Luxemburg consumers of solid fuel other than household fuel in comparison with the other consumers of the European Coal and Steel Community ;

Plaintiff states that the fundamental principles of the common market must provide the same pit-head price to all the consumers who buy the same product of the Community from the same producer.

Contrary to Plaintiff's opinion, the price increase resulting from the Decree of March 8th, 1954, does not affect the pit-head price of solid fuel bought by the Luxemburg consumers, but only the price at which solid fuel is sold, upon arrival, to the consumers falling under the jurisdiction of the Government of the Grand Duchy ;

The fact that the imposition made by the Caisse de Compensation has the form of a price increase is of little importance because, by its nature and its effects, it constitutes an imposition upon the value of solid fuel consumed in the Grand Duchy of Luxemburg otherwise than by households ;

If this imposition establishes a double price for solid fuel consumed within the Grand Duchy of Luxemburg, this is only true when one compares the price paid by consumers of industrial coal with the price paid by consumers of household fuel ;

Contrary to Plaintiff's opinion, the Court deems that this double price, which imposes the financing of the Caisse de Compensation exclusively upon the Luxemburg consumers of solid fuel other than household fuel, does not constitute a new violation of the principles of the common market, because the two categories of consumers are not in comparable situations.

The purpose of the price increase imposed by Ministerial Decree of March 8th, 1954, is specified in the preamble of said Decree ;

On the ground of this preamble the system of compensation between the prices of fuel for industrial consumption and for household consumption principally aims at maintaining the official prices in the domestic field, at preventing the deterioration of the purchasing power of the workers and at maintaining the level of wages and salaries connected to a mobile scale ;

None of these aims reveals the intention to influence the action of competition and can be considered contrary to the fundamental principles of the common market as formulated among others by Article 2 of the Treaty.

The answers given by the High Authority to the written questions which were asked during the legal inquiry show that there is no difference between the principles which led to the decisions concerning other systems of compensation and the principles which determined its attitude towards the Caisse de Compensation of the Grand Duchy of Luxemburg.

On the ground of all those reasons, the Court is of the opinion that the price increase resulting from the Ministerial Decree of March 8th, 1954, is not inconsistent with the basic principles of the common market.

2.—**As for major violation of procedure**

Plaintiff subsidiarily brings forwards that the implicit negative decision is vitiated because of major violation of procedure in so far as it is not based on expressed motives.

Article 88 of the Treaty stipulates that "when the High Authority considers that a State has failed in one of the obligations incumbent upon it by virtue of this Treaty, it shall take note of the said failure in a motivated decision";

The obligation to motivate therefore concerns the decision which, in Plaintiff's opinion, the High Authority was bound to take with regard to the Luxemburg Government;

Nothing in Article 88 allows the conclusion that the same obligation exists with regard to a refusal to take a decision on the ground of that article;

Consequently, the absence of motivation of the implicit negative decision does not constitute a violation of Article 88 of the Treaty.

D.—**COSTS**

According to Article 60 of the Rules of the Court, a party that loses should bear the costs, but the Court may order total or partial compensation for the costs if both parties lose on one or several counts.

The Appeal 7–54 contains two claims: the Office Commercial du Ravitaillement and the Caisse de Compensation in matters of solid fuel.

As a result of the Decision of the High Authority of January 7th, 1955, concerning the Office Commercial du Ravitaillement, Appeal 7–54 has lost its object in so far as the first claim is concerned;

The parties agreed that no decision should be taken by the Court regarding this claim of the Appeal;

However, the Decision of the High Authority of January 7th, 1955, complies with Plaintiff's request for a declaration stating that the Office Commercial du Ravitaillement is inconsistent with the Treaty;

If this Decision had been taken before the expiration of the two-months time-limit following the submission of the letter of July 14th, 1954, addressed to the High Authority, it would have complied with Plaintiff's request regarding its first claim; it is therefore possible, notwithstanding the fact that there is no reason for a ruling by the Court, to consider that Plaintiff's Appeal is well-founded in its first claim.

In its second claim, the Appeal requesting annulment of the implicit negative decision, it is rejected.

Both Plaintiff and Defendant can be considered as having lost each on one of their claims.

The intervention only regards the second claim of the Appeal and on that claim Plaintiff lost.

Under these conditions, the costs of the principal parties have to be compensated, each party bearing its own costs; Plaintiff will bear the costs of the intervening party.

Appeal 9–54 was only submitted in so far as needed ;

The Application specifies, " that the right to appeal having been acquired, the written and motivated answer of the High Authority can neither suppress nor change this right, nor can it oblige Plaintiff to submit another Application after submission of the Appeal " ;

" Supposing however that an interested party claims the opposite, in the sense that the said letter of November 27th, 1954, constitutes an explicit negative decision which ends the silence of the High Authority, it is Plaintiff's interest in order to avoid a sterile discussion regarding questions of admissibility to submit, which they do herewith, an Appeal in so far as needed against the negative answer opposed by the High Authority to their request ".

The Court has established the admissibility of Appeal 7–54.

As a result, Appeal 9–54, submitted in so far as needed, has lost its object ;

Therefore there is no need for a ruling by the Court.

**COSTS**

There is no need for a ruling by the Court on Application 9–54.

However, Plaintiff's opinion was well-founded as to the necessity of submitting this Appeal, since the High Authority, although it did not formally declare that the letter of November 27th, 1954, by transforming the implicit Decision into an explicit one, rendered Appeal 7–54 inadmissible, developed this opinion in its Counter-Memorial.

All parties have therefore equally misconceived the admissibility of Appeal 7–54 ;

On that ground, the costs pertaining to Appeal 9–54 have to be compensated, each party, including the intervening party, bearing its own costs.

Having considered the Proceedings ;

Having heard the Pleadings of the parties and the intervention of the Luxemburg Government ;

Having heard the conclusions of the Advocate General ;

Having regard to Articles 4, 33, 35, 48, 67, 80, 86 and 88 of the Treaty ;

Having regard to the Protocol on the Statute of the Court of Justice ;

Having regard to the Rules of the Court and the Rules of the Court concerning the Costs ;

Taking official notice of Plaintiff's declaration according to which Plaintiff considers that, following the Decision of the High Authority of January 7th, 1955, regarding the Office Commercial du Ravitaillement, and without prejudice to its motivation, its Appeal has lost its object in so far as its claims were complied with by this Decision ;

rejecting all further submissions and submissions to the contrary, holds and decides:

I.—In case No. 7–54

(*a*) as for the first claim, concerning the Office Commercial du Ravitaillement: there is no need for a ruling by the Court;

(*b*) as for the second claim, concerning the Caisse de Compensation attached to the Office Commercial du Ravitaillement: the Appeal is rejected.

The costs of the principal parties are compensated, each party shall bear its own costs;

Plaintiff shall bear the costs of the intervening party.

II.—In case No. 9–54: there is no ground for a ruling by the Court.

The costs are compensated, each party, including the intervening party, shall bear its own costs.

Thus done and judged by the Court in Luxemburg, on April 23rd, 1956.

PILOTTI RUEFF RIESE

SERRARENS DELVAUX HAMMES van KLEFFENS

Read in a public session in Luxemburg, on April 23rd, 1956.

*The President:* M. PILOTTI

*The Judge Rapporteur:* J. RUEFF

*The Registrar:*
A. VAN HOUTTE

# JUDGMENT OF THE COURT

## IN THE JOINT CASES No. 8–54 AND 10–54: THE ASSOCIATION DES UTILISATEURS DE CHARBON DU GRAND-DUCHE DE LUXEMBOURG *vs* THE HIGH AUTHORITY

(TRANSLATION, the French text being authoritative)

In the cases

the ASSOCIATION DES UTILISATEURS DE CHARBON DU GRAND-DUCHE DE LUXEMBOURG,

which has chosen as its address for service its office, 8 Avenue de l'Arsenal, Luxemburg,

*Plaintiff*

represented by its board of directors, assisted by Mr. Alex BONN, Barrister and Solicitor in Luxemburg,

*vs*

the HIGH AUTHORITY OF THE EUROPEAN COAL AND STEEL COMMUNITY,

which has chosen as its address for service its office, 2 Place de Metz, Luxemburg,

*Defendant*

represented by its Legal Adviser Mr. Nicola CATALANO, as Agent,

assisted by Mr. Ernest ARENDT, Barrister and Solicitor in Luxemburg.

the GOVERNMENT OF THE GRAND DUCHY OF LUXEMBURG,

which has chosen as its address for service the Ministry of Foreign Affairs, 5 rue Notre-Dame, Luxemburg,

*Intervening Party*

represented by Mr. Pierre PESCATORE, Legal Adviser of the Ministry of Foreign Affairs,

concerning, on the one hand, the Appeal for annulment filed against the implied negative Decision resulting, in application of Article 35 of the Treaty, from the fact that the High Authority did not answer the letter of July 20th, 1954, by which Plaintiff requested that a decision be taken or a recommendation be made regarding the activities of the Office Commercial du Ravitaillement du Grand-Duché de Luxembourg and regarding the Caisse de Compensation attached to this Office by Ministerial Decree of March 8th, 1954 (case 8–54);

on the other hand, the Appeal for annulment filed "in so far as needed" against the negative Decision of the High Authority, which follows from its letter of November 27th, 1954, answering the request contained in the letter of July 20th, 1954 (case 10–54);

THE COURT

composed of

President PILOTTI,

Presidents of the Chambers RUEFF and RIESE,

Judges SERRARENS, DELVAUX, HAMMES and VAN KLEFFENS,

Advocate General: ROEMER,

Registrar: VAN HOUTTE,

delivers the following

# JUDGMENT

*As regards the facts:*

1.—*Concerning the facts and the procedure*

By its Application of October 16th, 1954 (Application 8–54), the Association des Utilisateurs de Charbon du Grand-Duché de Luxembourg requested:

" May it please the Court

to declare the present Appeal formally valid,

to declare it justified on its merits,

to annul the implicit negative Decision of the High Authority which arose after the Association des Utilisateurs de Charbon du Grand-Duché filed its letter of July 20th, 1954,

consequently to declare that the High Authority will be bound to decree, by way of a decision or Recommendation:

(1) the suspension of the activities of the Office Commercial du Ravitaillement in so far as it is the sole importer of coal in the Grand Duchy of Luxemburg,

(2) the prohibition and abolition of the Caisse de Compensation attached to the Office Commercial du Ravitaillement by Ministerial Decree of March 8th, 1954,

To condemn the High Authority in the Costs."

The Plaintiff joined to his Application:

(1) a copy certified true by Plaintiff of the letter Plaintiff addressed to the President of the High Authority on July 20th, 1954;

(2) a copy of the Grand-Ducal Decree of April 30th, 1945, and of the Ministerial Decree of March 8th, 1954;

subsequently Plaintiff filed with the Registry of the Court:

—the memorandum and articles of association of the " Association ",

—a procuration of the members of the board of directors of the Association, for Mr. Alex Bonn, Barrister and Solicitor in Luxemburg,

—a testimonial certifying that Mr. Alex Bonn is of the Luxemburg Bar;

By letter of November 27th, 1954, Defendant informed Plaintiff that the Caisse de Compensation " does not imply any consequence inconsistent with the Treaty and therefore cannot be prohibited ";

In consequence of this letter, Plaintiff filed on December 23rd, 1954, " in order to avoid a sterile discussion regarding questions of admissibility ", a second Application (Application 10–54) with the same object as the preceding one and by which Plaintiff requested furthermore

" May it please the Court

to declare the present Appeal, filed in so far as needed, formally admissible and founded on its merits;

while maintaining the Appeal of October 16th, 1954, the submissions of which are requested to be adjudicated in the first place, to annul in so far as it may be necessary the negative Decision of the High

Authority deriving from its letter of November 27th, 1954, which rejects the request of the Association des Utilisateurs de Charbon du Grand-Duché de Luxembourg of July 20th, 1954 ;

consequently, to declare that the High Authority shall be bound to decree, by way of a decision or a recommendation:

(1) the suspension of the activities of the Office Commercial du Ravitaillement in so far as it is the sole importer of coal in the Grand Duchy of Luxemburg ;

(2) the prohibition and abolition of the Caisse de Compensation attached to the Office Commercial du Ravitaillement by Ministerial Decree of March 8th, 1954 ;

to condemn the High Authority in the Costs ".

By Decision of January 7th, 1955, the High Authority gave the Luxemburg Government time until March 31st, 1955

—either to repeal the Decree confirming the activity of the Office Commercial du Ravitaillement,

—or to modify the provisions thereof in order to make them consistent with the Treaty.

After two requests from Defendant for extension of the time-limit, which were granted by Order of the President of the Court on November 11th, and again on December 9th, 1954, Defendant filed on January 12th, 1955, its Counter-Memorials relating to the two above-mentioned Applications.

The Counter-Memorial pertaining to Appeal 8–54 requests:

" May it please the Court

to give official notice that the High Authority has chosen as its address for service, in accordance with Article 32, section 2 of the Rules of the Court, its office 2 Place de Metz, Luxemburg :

A.—Primarily:

to declare the Application inadmissible because Plaintiff lacks the necessary qualifications ;

B.—Subsidiarily:

(1) to give official notice that the High Authority relies on the wisdom of the Court with regard to the formal admissibility of the Application ;

(2) to declare and decide that there is no ground for a ruling by the Court with regard to the claim of the Application requesting annulment of the implicit negative Decision concerning the request for suspension of the activities of the Office Commercial du Ravitaillement, because this request has lost its object :

(3) to declare and decide that there is no ground for a ruling by the Court with regard to the claim of the Application requesting annulment of the implicit negative Decision concerning the request for suspension and abolition of the Caisse de Compensation in the matter of solid fuel, because this Application has lost its object ;

in any case to reject on its merits the above mentioned claim of the Application ;

C.—At all events to condemn Plaintiff to pay the expenses, costs and fees."

The Counter-Memorial pertaining to Appeal 10–54 contains the same conclusions with the exception that the last paragraph of section 4 is replaced by the following text:

"only taking into consideration the conclusions presented in so far as needed and aimed at the negative Decision deriving from the letter of the High Authority of November 27th, 1954, to reject on its merits the above mentioned claim of the Application and to reject all further submissions and submissions to the contrary".

On January 13th, 1955, an Order of the President of the Court fixed February 15th as the time-limit for the submission of the Reply;

On February 7th, 1955, Plaintiff requested the Court to extend this time-limit to March 25th, 1955, in order to "know what the attitude of the Luxemburg Government would be regarding this Decision"—the Decision of January 7th, 1955—"so as to be able to expose its own opinion in the Reply";

An Order of the President of the Court of February 11th, 1955, complied with this request.

In the Replies relating to Application 8–54 Plaintiff submitted the following conclusions:

"May it please the Court

to reject the grounds for inadmissibility and arguments presented by Defendant;

I—A. to declare that Plaintiff is qualified to appeal to the Court of Justice on the ground of Article 35 of the Treaty; consequently, to declare admissible the Appeal brought by the Association;

B. to declare formally admissible the Application containing two connected claims;

II—A. to give Plaintiff official notice that, without prejudice to the motivation of the Decision of the High Authority of January 7th, 1955, concerning the Office Commercial due Ravitaillement, the Court considers that, following this Decision, Plaintiff's Appeal has lost its object in so far as settled by this Decision; to condemn Defendant in the costs;

B. (*a*) to declare that the Appeal originally filed against the implicit negative Decision resulting from the silence of the High Authority, has remained unchanged notwithstanding the letter of the High Authority of November 7th, 1954, which is not relevant to the proceedings; to give Plaintiff official notice that it has maintained and maintains without modifications the previous submissions and the grounds on which they are based; to declare that the question of the admissibility of an Appeal by Plaintiff against an explicit negative decision of the High Authority does not arise in this dispute; therefor to declare the Appeal admissible in so far as it has not been settled by the above mentioned Decision of the High Authority;

(*b*) to declare the request well-founded; consequently

(1) to declare that the Caisse de Compensation established by Ministerial Decree of March 8th, 1954, constitutes a special charge which is inconsistent with Article 4 *c* of the Treaty;

(2) to declare that the Caisse de Compensation established by Ministerial Decree of March 8th, 1954, constitutes a discrimination which is inconsistent with Article 4 *b* of the Treaty ;

to declare that the functioning of the Caisse de Compensation is closely linked to the existence of the import-monopoly of the Office and that the disappearance of the latter necessarily must bring about the disappearance of the Caisse de Compensation ;

to declare that the levy, in so far as it constitutes a price increase for solid fuel not destined for household consumption, violates the Decisions of the High Authority which were taken on the ground of Articles 63, paragraph 2 *a* of the Treaty namely, Decisions No. 4–53 of February 12th, 1953, 6–53 of March 13th, 1953, 15–54 of March 19th, 1954, 19–54 of March 20th, 1954, and 20–54 of March 20th, 1954 ;

(3) to declare in any case that the functioning of the Caisse de Compensation established by Ministerial Decree of March 8th, 1954, violates the most fundamental principles of the common market such as was established by the Treaty :

consequently :

to declare that the High Authority shall be bound to decree by way of a decision or a recommendation, the prohibition and abolition of the Caisse de Compensation attached to the Office Commercial du Ravitaillement by Ministerial Decree of March 8th, 1954 ;

to condemn the High Authority in the expenses, costs and fees, subject to all reservations."

The Reply pertaining to Application 10–54 submits the same conclusions, except for the following modifications :

*First paragraph*

" May it please the Court

to join the two Applications because of their connexity ;

to reject the grounds for inadmissibility and the arguments submitted by Defendant " ;

After II—B. (*a*) : addition of the following paragraph :

" subsidiarily and in case the refusal of the High Authority deriving from its letter of November 27th, 1954, must be considered as an explicit Decision, to declare admissible the Appeal against aforesaid Decision ".

The cases 8–54 and 10–54 were joined " for all purposes of procedure " by Order of the President of the Court of March 25th, 1955.

In the Rejoinder which, following the Order concerning the junction, is the same for the cases 8–54 and 10–54, Defendant requests

" May it please the Court

to declare well-founded the conclusions previously submitted in the case."

The four following facts occurred between the filing of the Reply and the deposit of the Rejoinder:

(1) Publication of the Grand Ducal Decree of April 2nd, 1955, which modifies the system of the import-tax and the tax on the turnover of solid mineral fuel;

(2) Publication of the Ministerial Decree of September, 12th, 1955, abrogating the Ministerial Decree of March 8th, 1954, concerning the functioning in matters of solid fuel of the Caisse de Compensation attached to the Office Commercial du Ravitaillement, becoming effective on April 2nd, 1955;

(3) Publication of the Ministerial Decree of September 30th, 1955, abrogating the Ministerial Decree of March 8th, 1954, concerning the import of solid fuel, which was freed while the Luxemburg Government however withheld certain rights to intervene. This Decree became effective on October 1st, 1955;

(4) Filing, a few hours before the deposit of the Rejoinder, of an Application for Intervention from the Luxemburg Government requesting

" May it please the Court

to give official notice to the Luxemburg Government of its intervention; to declare this intervention admissible and well-founded; furthermore to give official notice to the intervening party that it supports the submissions of the High Authority, requesting the rejection of the Appeal of the Association des Utilisateurs de Charbon du Grand-Duché de Luxembourg; to condemn Plaintiff in the costs and expenses of the intervention."

In the written observations presented in application of Article 71, section 3 of the Rules of the Court, Plaintiff contested the " merits of the intervention " and, pursuant to Article 71, section 4, the Court examined the claim, after hearing the parties and the conclusions of the Advocate General during public hearings which were held on November 19th, 1955;

By Order of November 24th, 1955, the Luxemburg Government was " admitted in its intervention ", whilst the " examination of the submissions and arguments presented in the Application for intervention, as well as the examination of their admissibility were joined to the examination of the merits of the case ";

At the public hearings of the same day, the Court informed the parties that it would accept until December 7th, 1955, " preparatory notes for the future oral discussion; which the parties might deem useful to present following the hearings concerning the request for intervention ";

Consequently, Plaintiff presented on December 6th, 1955, " additional observations ";

In these observations Plaintiff refers to those which were submitted on the same day by the Groupement des Industries Sidérurgiques Luxembourgeoises in the joint cases 7–54 and 9–54 and which pertain namely to the following points:

" The Groupement des Industries Sidérurgiques Luxembourgeoises rejects the reasoning developed by the High Authority in the Rejoinder and based on the fact that the Luxemburg steel industry has not " brought forward the inconsistency with the Treaty of the Grand Ducal Decree of April 2nd, 1955, the economic effects of which are identical to those of the Ministerial Decree of March 8th, 1954 ". The Groupement declares that if it has not brought forward before now this inconsistency of the new system with the Treaty, it is because it seemed advisable to await the decision of the Court in the present dispute ;

The Groupement des Industries Sidérurgiques Luxembourgeoises sees in the " attitude of the Luxemburg Government which abolished the Caisse de Péréquation " an argument in favour of its position, because this attitude " seems to indicate that the Luxemburg Government had, to say the least, such serious hesitations regarding the previous system that it preferred to avoid a ruling by the Court " ;

The Groupement des Industries Sidérurgiques Luxembourgeoises deems possible " that one of the member States of the Community may obtain, on the ground of the reserved competences, certain economic effects, especially with a social aim, by way of a system consistent with the Treaty, while another system with the same results might not be consistent with it " ;

The Groupement des Industries Sidérurgiques Luxembourgeoises rejects also the arguments of the Luxemburg Government based on

—the lack of legal qualification of Plaintiff with regard to the particular nature of the dispute ;

—the interpretation of Article 4 of the Treaty which, according to the intervening party, could not be " a sufficient ground for an Appeal, nor a sufficient basis for a ruling by the Court " :

—the fact that " the Appeals have lost their object and that the Groupement has no interest in proceeding with them."

After the submission of the Rejoinder on September 30th, 1955, the written procedure was closed, pursuant to Article 34, paragraph 1 of the Rules of the Court.

Pursuant to Article 34, paragraph 1 of the Rules of the Court, the President of the Court designated, on September 30th, 1955, Judge Rueff as Judge Rapporteur.

The Judge Rapporteur has, in his preliminary report, provided for in Article 34 of the Rules of the Court, concluded that a judicial inquiry was necessary ;

The Second Chamber of the Court has by an Order read in a public session on November 30th, 1955, requested the parties to send, before December 14th, 1955, several written indications ;

The parties have sent the requested indications on December 12th.

By Order of December 14th, 1955, the Second Chamber of the Court declared closed the judicial inquiry and fixed January 7th, 1956, as the time-limit, provided for in Article 45 of the Rules of the Court, for the submission of the final written conclusions of the parties ;

These conclusions were filed respectively on January 4th and 7th ; they confirmed the previous submissions.

In accordance with Article 45, section 2 of the Rules of the Court, the President of the Court fixed February 1st, 1956, and if need be, the following days as the date for the oral proceedings.

Public hearings were held on February 7th and 8th, 1956.

In the course of these hearings the Court heard the parties.

At the public session of February 8th, 1956, the Advocate General presented the following conclusions :

" to reject the Appeal as inadmissible,

to condemn Plaintiff in the costs, including those of the intervening party " ;

2.—*Concerning the grounds and arguments of the parties*

The grounds and arguments of the parties can be summarized as follows :

(1) *As for the admissibility,* the High Authority brings forward in the first place the arguments based on the lack of qualification of the Association.

In Defendant's opinion Plaintiff is not " one of the producing enterprises provided for in Article 80, nor an association of enterprises provided for in in Article 48 of the Treaty. Even if Plaintiff could be considered an enterprise or an organisation in the sense of Article 80, it could only appeal to the Court in the exceptional cases concerning the matters provided for in Articles 65 and 66 of the Treaty. An Appeal based on Article 35 (and also if it were based on Article 33) must be judged inadmissible because of lack of qualification. Finally Plaintiff can not bring forward that it has among its members the Groupement des Industries Sidérurgiques Luxembourgeoises. The Association has indeed a personality which is distinct from that of its members ".

Plaintiff rejects the thesis according to which the conditions required by Article 33 are also required when Article 35 is applied :

" If Article 33 limits the right to appeal provided therein to the enterprises and associations provided for in Article 48, Article 35 does not contain the analogous provisions and does not limit the enterprises and the associations empowered to act and, if need be, to appeal to the Court ; the absence of a reference to Article 48 is significant and under those conditions the restrictive interpretation of Article 35 proposed by the High Authority would impose upon this provision a limitation which it does not contain ".

In Plaintiff's opinion " on the ground of Article 35 the right provided for therein belongs both to the enterprises, the definition of which is given in principle by Article 80, and to the associations, which must be understood in the broad conception of Article 46 ".

In the Rejoinder, the High Authority maintains its interpretation of Article 35 : " The absence of an explicit reference to Article 48 in Article 35 does not seem to be a determining element for the interpretation of the text, because in Article 35 there is neither a reference to Article 46 which, according to Plaintiff, is implicitly referred to. If the explicit reference were essential, as Plaintiff seems to believe, the drafters of the Treaty would not have omitted in the text of Article 35 a reference to Article 46 in order to avoid any possible uncertainty, just as they referred to Article 48 in the text of Article 33 ".

Furthermore the High Authority brings forward the following two arguments :

(*a*) May an Application have " for its object two distinct claims " ? Defendant asks this question in the Counter-Memorial and specifies in the Rejoinder that Plaintiff does not give any proof of the connexity between the two claims. However, Defendant declares that " he has not brought forward the formal inadmissibility of the Application instituting proceedings " and that he " preferred, in this matter, to rely on the wisdom of the Court ".

Plaintiff answers the question affirmatively and points out,

on the one hand,

> there is no provision forbidding a party to submit several claims in its Application ; that such a ground of inadmissibility can not be supplemented " ;

on the other hand,

> " that the two claims joined in a single Application evidently are closely linked, whatever the attitude of the High Authority may be with regard to these two claims "

and that this link authorizes Plaintiff to refer to the case-law of the Court in its Judgment 1–54 ;

(*b*) Has the letter of the High Authority of November 27th, 1954, which motivates Defendant's refusal, rendered the Application inadmissible?

Defendant brings forward in the first place that such a new fact calls for " the modification of the initial submissions ", . . . " the modification of the claim and therefore of the object itself of the dispute ", . . . " the submission by Plaintiff of new grounds ", therefore a " real renewal of the proceedings ". In Defendant's opinion " the action can not be pursued on the basis of Article 35 of the Treaty ".

In the Reply, Plaintiff upholds the admissibility of the first Application and brings forward that " the right to appeal against the implicit negative decision was secured at the end of the two month time-limit provided for in Article 35 of the Treaty ".

In the Rejoinder, Defendant does not oppose Plaintiff's answer with any new arguments. Referring to its previous Memorial, Defendant specifies that he " certainly did not intend to oppose a formal ground of inadmissibility to Plaintiff's action " ; indeed Defendant admits that " the remarks of the High Authority could in no case result in preventing the Court from ruling on the merits of the case ".

Therefore this argument is submitted to the Court only because, " although it has no practical bearing on the proceedings instituted by Plaintiff, it presents, however, an interest as a principle for the executive of the Community which awaits the judgments of the Court for future reference ".

(*c*) Does Plaintiff still have a legal interest in the pursuit of its action before the Court, after abrogation by Ministerial Decree of September 12th, 1955, effective on April 2nd, 1955, of the Ministerial Decree of March 8th, 1954, regarding the functioning of the Caisse de Compensation for solid fuel attached to the Office Commercial du Ravitaillement?

As the Reply was already filed in the Registry of the Court at the moment this new fact occurred, the Second Chamber asked Plaintiff, in the course of the above-mentioned inquiry :

" whether the regulations which the Luxemburg Government substituted to the disputed system seem to correspond to what Plaintiff would have obtained if the High Authority had not rejected its request of July 20th, 1954.

In case of an affirmative answer, what is, in Plaintiff's opinion, the interest which it has in the pursuit of its action before the Court?"

Plaintiff answered these questions as follows :

" The new regime instituted by the Luxemburg Government maintains the previous special charges and discriminations under a different form. However, as the Caisse de Compensation has been abolished for the future, the Appeals submitted by the Association have lost their object for the future ;

on the other hand, however, as the Luxemburg Government has maintained the Caisse de Compensation for the period prior to April 2nd, 1955, the controversial question whether the Caisse is consistent with the Treaty remains as was for the past and must be settled by the Court which has exclusive jurisdiction over this case. The interest of the Association in this question can be measured by the amount of the increase resulting from the compensation which would be due by the Luxemburg steel industry for the controversial period—between March 1st, 1954, and March 31st, 1955—namely 28.171.984 francs. For the other importers of industrial coal in the Grand Duchy which are members of the Association, it concerns an amount of 120.333 tons at 8 francs, i.e. 962.664 francs. This amount, included in the price which was charged by the Office Commercial du Ravitaillement, had to be paid by the consumers ".

(2) *As for the ground of violation of the Treaty,* Plaintiff brings forward that, by maintaining the Office Commercial du Ravitaillement and the Caisse de Compensation, the Luxemburg Government failed in the obligation which results for the member States from Article 86 of the Treaty and that the High Authority should have ascertained this failure by applying Article 88.

To prove the inconsistency with the Treaty of the Office and the Caisse de Compensation, Plaintiff bases its opinion, on the one hand, on Articles 3 *b*, 4 *b*, 4 *d* and 66, paragraph 7, and, on the other hand, on Article 4 *c* of the Treaty.

Plaintiff has ascertained that, following the Decision of January 7th, 1955, its Appeal " has lost its object in so far as it was settled by this Decision ",

there is therefore no need to reproduce the arguments concerning the question whether the Office Commercial du Ravitaillement is consistent with the provisions of the Treaty. The arguments relating to this Office will only be summarized in so far as they influence the corresponding question concerning the Caisse de Compensation.

The arguments brought forward by the parties concerning the Caisse de Compensation attached to the Office Commercial du Ravitaillement can be summarized as follows :

I.—The Caisse de Compensation is inconsistent with the Decisions of the High Authority based on Article 63, paragraph 2, concerning the price level for solid fuel on the common market.

Defendant, however, calls attention to the fact

> " that maximum prices are imposed on the coal-producing enterprises and that the fixation of maximum prices does not prevent the products being subject to taxes, levies or any other general charge at the moment of their consumption or at any stage of the distribution ".

II.—The abolition of the Office Commercial du Ravitaillement removes the material and legal basis for the Caisse de Compensation and must bring about the disappearance of the latter.

According to Plaintiff, " the Office can only increase the price of fuel when it buys and sells this fuel itself, that is to say when it possesses the import monopoly in the Grand Duchy of Luxemburg " ;

Therefore " it follows from the preamble of the Decision of the High Authority of January 7th, 1955, that the High Authority . . . had the intention to abolish the import monopoly for solid fuel detained by the Office ".

" Consequently . . . the disappearance of the import monopoly of the Office removes the material and legal basis of the Caisse de Compensation and must bring about, consequently, the disappearance of the latter ".

Defendant answers that its decision of January 7th, 1955, which declares the functioning of the Office inconsistent with the Treaty, " has nothing to do with the legality of the perequation of household fuel ", because " the abolition of the monopoly, requested by the High Authority, included the necessity of modifying the system of receipt but certainly did not include the necessity of suppressing the perequation system ".

III.—The Caisse de Compensation is inconsistent with the basic principles of the common market.

This argument was only brought forward in the Reply. Plaintiff sets forth that

> " the basic principles of the common market such as it was conceived by the Treaty, must procure, as a practical result, the same pithead price for all the consumers of the common market who buy the same product of the Community from the same producer "
>
> . . .
>
> " to form the delivery price only the real transport costs and the fiscal duties existing in each member State may be added to this pithead price ".

And, in Plaintiff's opinion, " the levy cannot be considered as a fiscal duty ".

While making all reservations as to the admissibility of this argument which was not brought forward in the Applications—these reservations being based upon Articles 22 of the Statute of the Court and 29 of the Rules of the Court—Defendant replies, in the Rejoinder, that

> " nothing prevents Member States from imposing taxes or duties upon the industries or the products of the Community in order to use all or parts of the receipts thereof for the subvention of household fuel ".

And Defendant declares not to see

> " why a purely fiscal system would be acceptable while, on the contrary, a perequation system having altogether comparable if not identical economic effects should be considered inconsistent with the Treaty ".

IV.—The perequation system instituted by the Caisse de Compensation violates Article 4 *c* of the Treaty.

In its letter of July 14th, 1954, to the High Authority, and later in the Application, Plaintiff sets forth that the establishment of the Caisse de Compensation for solid fuel " involved the imposition of a special charge upon the consumers of solid fuel other than household fuel ".

This thesis is developed in the Reply where Plaintiff studies separately the effects of the levy where it concerns metallurgic coke and where it concerns industrial coal:

(*a*) As for metallurgic coke, Plaintiff, with the help of figures, states that " the levy only affects the Luxemburg steel industry, as this one is practically the only consumer of this kind of coal in the Grand Duchy of Luxemburg "; and that, therefore, " it was the purpose of the Luxemburg Government to impose the financing of the subvention of solid household fuel only upon the Luxemburg steel industry, through the institution of a perequation levy upon metallurgic coke ".

(*b*) As for imported industrial coal, Plaintiff states that the levy " affects the exploitation of enterprises of the industries provided for in Article 80 of the Treaty, namely the industries producing industrial coal which sell this kind of fuel to the industry of the Grand Duchy of Luxemburg ". And it " affects those enterprises in their capacity as competitors with liquid fuel ".

It is, therefore, Plaintiff's opinion that " an intervention of the State in the matter of prices of the products of the Community by way . . . of special charges " constitutes " an intervention which is, in itself, prohibited by the Treaty ".

Defendant replies that:

—as far as the coal industry is concerned, it cannot be subjected to a special charge, because this industry " does not exist in Luxemburg ";

—where the steel industry is concerned, it is not the only one to be affected by the levy, because it is imposed upon all the coal-consuming industries of Luxemburg. Defendant concludes that the levy " has undeniably the character of a general charge ";

—the levy cannot, " owing to its very limited amount, affect the conditions of competition on the common market ".

In the Rejoinder, Defendant, while admitting that, " because of the industrial structure of Luxemburg, the charges which affect the industrial consumers, in reality and essentially affect, in a considerable proportion, the steel industries ", rejects the conclusion " that the economic structure of Luxemburg prohibits the Government from taking economic measures, including fiscal measures, applying to industries, because they would all have to be assimilated to special measures affecting the steel industry and would, therefore, have to be prohibited ".

Apart from the refutation of Plaintiff's arguments, Defendant gives the interpretation of various points of the Treaty which it deems consistent with the will of the drafters of the Treaty and capable of clarifying the question whether the Caisse de Compensation is consistent with the Treaty:

—Defendant proposes in the first place a criterion that makes it possible to distinguish special charges from general ones: " In the first place this subsidy, aid or charge should present a special character, that is to say it should concern exclusively enterprises or products of the Community ". . . . " As soon as the subsidy, the aid or the charge concerns a category of enterprises or products which extends beyond while including the enterprises and the products of the Community, one is confronted with a general measure which only depends on the eventual application of Article 67 of the Treaty ".

—Defendant makes a distinction " between the subsidies, aids or charges concerning the enterprises and those concerning the products of the Community ". In the second case, " any subsidy, aid or special charge applicable to a product of the Community at any point of its channel of distribution will be prohibited only if its indirect consequence is either to disrupt competition or to involve a favour or an advantage for enterprises of the Community ".

—Finally, Defendant justifies its restrictive interpretation of Article 4 *c* of the Treaty with two arguments based, one on section 11 of the Convention containing the transitional provisions, the other on the " retained competence of the member States, especially in fiscal matters ".

The first argument, an argument " a contrario ", is based upon the fact that " the said provision pertains only to charges imposed upon the products of the Community ".

The second argument is based upon the finding that the member States have the right to increase or establish levies and taxes, " even when they are laid solely upon the products of the Community "; it is thus " permissible to impose upon those products a levy of a non-fiscal character, which, on the one hand, would have the same economic effects and, on the other hand, would not be inconsistent with the other prohibitions of Article 4 ".

V.—The perequation system instituted by the Caisse de Compensation violates Article 4 *b* of the Treaty.

Plaintiff states that " the establishment, in the Grand Duchy of Luxemburg, of a Caisse de Compensation for solid fuel has brought about . . . the establishment of a discrimination between the consumers of solid fuel other than household fuel in the European Coal and Steel Community and the Luxemburg consumers of that kind of fuel . . . "

The Reply states that this discrimination is prohibited by Article 4 *b* (special charges) and not by Article 67—actions of a member State liable to cause serious disturbance.

Indeed, the imposition:

(*a*) is not a tax: its purpose is not to "cover the totality of public expenses", because the Ministerial Decree of March 8th, 1954, "assigns to it a special and exclusive affectation";

(*b*) "nor can it be considered as a levy, as the latter consists of an imposition upon certain individuals as counterpart for a performance accomplished for their benefit by the Administration".

Furthermore, those expressions are not used in the text which is a decree, "while according to Luxemburg law a levy can only be imposed by a law in application of Article 99 of the Constitution".

Therefore, in Plaintiff's opinion, "the impositions established under those circumstances have the character of a price and . . . consequently, the perequation imposition constitutes nothing else but an increase in prices".

The Counter-Memorial rejects the argument based upon Article 4 *b*, on the ground that the imposition constitutes a general charge permitted by Article 4 *c* and that the differences in general charges existing between the countries of the Community do not constitute the discrimination prohibited by Article 4 *b*.

Defendant also states that "one can never consider as a discrimination the fact that a general action of one of the member States does not correspond with the general action of the other member States" . . . "Especially in fiscal and in social matters substantial differences exist between the laws of the member States", because the member States retained their sovereignty in these fields.

On account of this fact

—Article 26 of the Treaty assigns a mission of harmonization to the Council of Ministers;

—Article 67 of the Treaty empowers the High Authority to intervene "in case the national action in economic matters had a repercussion upon competition in the coal and steel industries".

To these arguments Defendant adds in the Rejoinder its own interpretation of the notion of discrimination. For Defendant "the notion of discrimination prohibited by Article 4 . . . such as it is specified, among others, by Article 60, section 1, in matters of price, and by Article 70, paragraph 1, in matters of transport, implies a difference of treatment of people placed in comparable situations. The difference of treatment therefore ceases to constitute a prohibited discrimination when it is justified by a difference in the respective situations of the interested parties".

And, "the Governments, because they are sovereign in matters of general economic policy, can apply different treatments to categories of populations which are different from an economic and social point of view".

In short, it is important for Defendant to examine "whether the difference of treatment established by a government among different categories of people, as a result of its economic policy, affects the competition on the market".

Defendant's interpretation is complemented by the following answer to the questions asked during the judicial inquiry:

"The principal interventions of the High Authority in matters presenting a certain analogy with the object of the present dispute have been the following:

(1) By Decision No. 25–53 (*Official Gazette of the Community, March 13th, 1953, p. 83*)[1] based on section 11 of the Convention containing the Transitional Provisions, the High Authority decided to abolish, to reduce or to maintain, under specific conditions, certain special charges imposed upon the German coal-mines. By Decision No. 17–54 of March 20th, 1954 (*Official Gazette of the Community, March 24th, 1954, p. 266*)[1] the High Authority decided to abolish all special charges imposed upon the German coal-mines, including those pertaining to reductions of prices for deliveries of household fuel.

This abolition was decided in application of section 11 of the Convention and Article 4 *c* of the Treaty because those charges were special charges imposed upon enterprises of the Community. There is no contradiction between these Decisions and the High Authority's stand concerning the request of the Association des Utilisateurs de Charbon du Grand-Duché de Luxembourg.

(2) In France, a Ministerial Decree of March 30th, 1953, established a system of perequation for household fuel imported from other countries of the Community. This matter formed the object of an Appeal to the Court of Justice by the Belgian Government (Case 4–53); this Appeal was later withdrawn. Following the intervention of the High Authority, certain substantial modifications were applied to the French system in order to eliminate certain discriminations inconsistent with the Treaty.

(3) By Decision No. 29–53 (*Official Gazette of the Community, May 21st, 1953, p. 129*)[1] and No. 23–54 (*Official Gazette of the Community, March 31st, 1954, p. 293*)[1] of March 30th, 1953, and March 29th, 1954, the High Authority authorized the Government of the Netherlands, on the ground of section 24, paragraph 3 of the Convention containing the transitional provisions, to maintain until March 31st, 1955, a perequation system, funds for which were provided by an imposition on the Dutch production of coal.

A similar authorization was not needed for the Caisse de péréquation in Luxemburg, as the funds for this Caisse were obtained by an imposition upon the national production of coal and did not, therefore, require an authorization from the High Authority on the ground of the above-mentioned section 24.

(4) In April, 1954, the French Government issued a Decree with the purpose of compensating the distortion resulting from the difference between the internal and international freight for

(1) This reference applies to the German, French, Italian and Dutch editions of the Official Gazette of the European Coal and Steel Community, published in Luxemburg.

river transport. The High Authority pointed out that the above-mentioned system contained discriminatory elements inconsistent with the Treaty. Following an exchange of letters, and after consulting the Council of Ministers, on the ground of section 2, 4 of the Convention, the French Government, accepting the point of view of the High Authority, modified the above-mentioned Decree in order to eliminate from the perequation system, which it had instituted, any element inconsistent with the Treaty."

(3) *As for the ground of major violation of procedure,* Plaintiff brings forward " subsidiarily . . . that the implicit negative decision is vitiated because of major violation of procedure, in so far as it is not based upon expressed motives ". As Defendant's explicit refusal was given before it submitted the Counter-Memorial, the High Authority did not formally express its view on this point: Defendant only pointed out that the decision requested by Plaintiff was " now explicitly and sufficiently motivated, as the High Authority had clearly set forth in its letter of November 27th, 1954 . . . the legal reasons why it cannot accept the point of view of the Groupement ".

*As Regards the Law :*

The Court bases its judgment on the following considerations:

**CONCERNING THE ADMISSIBILITY OF THE APPEALS Nos. 8–54 AND 10–54**

As for Plaintiff's qualification to appeal to the High Authority in pursuance of Article 35 of the Treaty:

Article 35 gives to the " enterprises and associations " the competence to appeal to the High Authority ;

The associations referred to in this text can only be the associations of enterprises, in the sense given to the expression " enterprise " by Article 80 of the Treaty, and likewise for all the provisions of the Treaty ;

Indeed, if it were not so one would admit for an association a competence to introduce proceedings while this competence could not be exercised individually by the constituting members themselves ;

As there are no indications to the contrary, it must be accepted that the Treaty does not create such a disparity of treatment between an association and the members which form it.

It is necessary to examine whether Plaintiff fulfils the above mentioned condition.

The Association des Utilisateurs de Charbon du Grand-Duché de Luxembourg was established by

—the Fedération des Industriels Luxembourgeois

—the Groupement des Industries Sidérurgiques Luxembourgeoises

—the Groupement des Négotiants de Combustibles en gros

—the Société Nationale des Chemins de Fer Luxembourgeois

—Mr. Léon Brasseur, Engineer, representing the Usines à gaz du Grand-Duché de Luxembourg ;

according to Article 1 of the memorandum and articles of association, its object is:

(*a*) to defend and represent the interests of the consumers of coal within the limits of the objectives of the European Coal and Steel Community ;

(*b*) to give advice concerning questions which are of interest to the consumers of coal and which might be submitted to it either by an organ of the European Coal and Steel Community, or by any other authority ;

It is also, as its title expressly indicates, an association of consumers of coal ;

The presence of the Groupement des Industries Sidérurgiques Luxembourgoises among the members does not modify this character, and furthermore this Groupement already submitted on its own account an Appeal with the same object ;

Article 1 of the memorandum and articles of association does not allow any doubt that its object is to defend and represent the interests of its members in their quality as consumers of coal and to give advice concerning questions of interest to the consumers of coal ;

On the ground of these reasons, and although this finding does not prejudge the qualification required to appeal to the Court on the ground of other articles of the Treaty, the Association des Utilisateurs de Charbon du Grand-Duché de Luxembourg is not an association empowered to appeal to the High Authority on the ground of Article 35 ;

Therefore, the Appeals 8–54 and 9–54 are inadmissible ;

Under these conditions, Plaintiff must be condemned in the costs.

Having considered the Proceedings ;

Having heard the Pleadings of the parties and the intervention of the Luxemburg Government ;

Having heard the conclusions of the Advocate General ;

Having regard to Articles 4, 33, 35, 48, 67, 80, 86 and 88 of the Treaty ;

Having regard to the Protocol on the Statute of the Court of Justice ;

Having regard to the rules of the Court and the Rules of the Court concerning the Costs ;

Taking official notice of Plaintiff's declaration according to which Plaintiff considers that, following the Decision of the High Authority of January 7th, 1955, regarding the Office Commercial du Ravitaillement, and without prejudice to its motivation, its Appeal has lost its object in so far as its claims were complied with by this Decision ;

THE COURT

rejecting all further submissions and submissions to the contrary, holds and decides:

In the joint cases No. 8–54 and 10–54:

The Appeal is rejected ;

Plaintiff is condemned in the costs, including the costs of the intervening party.

Thus done and judged by the Court in Luxemburg, on April 23rd, 1956.

PILOTTI RUEFF RIESE
SERRARENS DELVAUX HAMMES van KLEFFENS

Read in a public session in Luxemburg, on April 23rd, 1956.

*The President :* M. PILOTTI

*The Judge Rapporteur :* J. RUEFF

*The Registrar :* A. VAN HOUTTE

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# BUDGET ESTIMATES

## OF THE ADMINISTRATIVE EXPENDITURE OF THE INSTITUTIONS OF THE COMMUNITY FOR THE FINANCIAL YEAR 1955–1956

(in Belgian francs)

**DECISION No. 23/56 of the Committee of Presidents set up under Article 78, 3 of the Treaty, fixing a Supplementary Budget Estimate of the administrative expenditure of the High Authority for the fourth financial year, ending June 30, 1956**

The Presidents of the four Institutions of the **COMMUNITY,**

HAVING regard to Article 78, 5 and 3 of the Treaty,

**DECIDE :**

to fix the sum of a Supplementary Budget Estimate of the administrative expenditure of the High Authority for the fourth financial year, ending June 30, 1956, at Bfr.4,000,000. Accordingly, the amount of the appropriations made under sub-head 23 (" Expenditure on publications and information ") of the Budget Estimates of the High Authority is hereby increased to Bfr.27,400,000.

This decision was deliberated and adopted by the Committee at Luxembourg on June 15, 1956.

The Chairman of the Committee :

Massimo PILOTTI
*President of the Court of Justice*

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(32376) Wt 8521— K8 9/56 D.L.

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